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THE THEOLOGICAL CASE FOR PROGRESSIVE TAXATION AS APPLIED TO DIOCESAN TAXES OR ASSESSMENTS UNDER CANON LAW IN THE UNITED STATES

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* Professor of Law, Notre Dame Law School. See Matthew J. Barrett, "Practicing What We Teach," *America* (March 29, 2004) 18–20, for a synopsis of this article. The author thanks research librarian Patti Ogden for her invaluable assistance in gathering, analyzing, and organizing authorities and conducting the survey described in part II. Although this article will refer to that survey as the "Notre Dame Law School survey" or the "NDLS survey," neither the University of Notre Dame nor the Notre Dame Law School has authorized, approved, or otherwise sanctioned the survey. The views expressed in this article are my own and not necessarily those of either the University of Notre Dame or the Notre Dame Law School. As someone who does not read or speak Latin and who has never received any formal training in canon law, the author fully recognizes his limitations in addressing this topic. Especially given those limitations, he gratefully acknowledges helpful suggestions and comments on earlier drafts from Thomas Brennan, John J. Coughlin, Benjamin J. Evans, Donald J. Frugé, Alan Gunn, M. Cathleen Kaveny, Michael S. Kirsch, Ken Milani, Kevin M. Misiewicz, Peter Norris, Patti Ogden, James R. Repetti, Robert E. Rodes, Jr., Donald B. Tobin, and Vincent D. Rougeau and timely research assistance from Paul E. Harold and Vincent G. Kalafat. Finally, the author thanks the Notre Dame Law School for the research leave that made this project possible, the Notre Dame Center for Ethics & Culture for its hospitality during that leave, and the following eighty-two dioceses, listed in alphabetical order, that responded to the NDLS survey: Altoona-Johnstown, Baker, Baltimore, Baton Rouge, Beaumont, Bismark, Boise, Bridgeport, Buffalo, Charleston, Charlotte, Cheyenne, Chicago, Cincinnati, Colorado Springs, Crookston, Davenport, Denver, Des Moines, Dubuque, Erie, Evansville, Fairbanks, Fargo, Fort Wayne-South Bend, Fort Worth, Galveston-Houston, Gary, Gaylord, Grand Island, Great Falls-Billings, Greensburg, Harrisburg, Hartford, Helena, Houma-Thibodaux, Indianapolis, Kalamazoo, Kansas City, Kansas City-St. Joseph, Lafayette, Lafayette in Indiana, Laredo, Lexington, Los Angeles, Lubbock, Marquette, Milwaukee, New Orleans, New York, Oakland, Ogdensburg, Owensboro, Palm Beach, Paterson, Peoria, Pittsburgh, Portland, Portland in Oregon, Providence, Raleigh, Richmond, Rochester, Rockford, Rockville Centre, Saginaw, San Angelo, San Bernardino, San Diego, San Jose, Scranton, Shreveport, Sioux Falls, Spokane, Springfield in Massachusetts, Springfield-Cape Girardeau, St. Cloud, St. Paul-Minneapolis, St. Petersburg, Stockton, Tucson, and Winona. Because several dioceses that responded to the NDLS survey specifically requested confidentiality and other dioceses may have presumed confidentiality, this article will try to avoid revealing any specific information that might attribute a response to a particular diocese. Accordingly, references to any specific survey response are cited by a random number assigned to the diocese, such as "NDLS Survey Response No. 1." The complete survey results are on file with the author. Copyright © 2004, Matthew J. Barrett.

1. Introduction

In a system of taxation based on justice and equity, it is fundamental that the burdens be proportioned to the capacity of the people contributing.

Pope John XXIII, *Mater et magistra*, May 15, 1961, ¶ 132: in *The Papal Encyclicals 1958–1981*, ed. Claudia Carlen (Ann Arbor: Pierian Press, 1990).

All the moral principles that govern the just operation of any economic endeavor apply to the Church and its agencies and institutions; indeed the Church should be exemplary.

NCCB, “Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy” ¶ 347, *Origins* 16 (June 5, 1986) 446.

Simply put, canon 1263 of the 1983 Code of Canon Law allows the diocesan bishop to impose two different taxes on the parishes in his diocese for diocesan needs—a so-called “ordinary tax” and an “extraordinary” exaction.¹ Using the words in the leading English translation, canon 1263 requires at least the former and probably also the latter, “to be proportionate to [the parishes’] income.”² To a tax lawyer, the adjective “proportionate” describes a so-called “flat tax,” or a system that imposes the same tax rate on every taxpayer’s taxable income. Canon law commentators, however, have consistently agreed that canon 1263 also authorizes a *progressive tax*, which in this article’s context would impose a higher marginal tax rate on parishes with larger incomes.³ This article contends that Catholic social thought, including the U.S. Bishops’ pastoral letter on the U.S. economy,⁴ as well as the economic policies supporting progressive taxes, urge diocesan bishops in the United States to

¹ See *infra*, notes 18–19 and accompanying text.

² See also *infra*, note 17 and accompanying text. Unless otherwise indicated, all code citations come from *New Commentary on the Code of Canon Law*, ed. John P. Beal et al. (New York: Paulist Press, 2000).

³ The term “progressive” can describe changes in either the *marginal* or the *effective* rates of taxation as income increases. See *infra*, note 88. Unless otherwise indicated, this article uses the term “progressive” to refer to graduated *marginal* tax rates.

⁴ NCCB, “Economic Justice for All.”

use progressive rates whenever they impose diocesan taxes and assessments⁵ under canon 1263.⁶

In gathering information for this article, a survey conducted by Research Librarian Patti Ogden of the Notre Dame Law School (the "Notre Dame Law School survey" or the "NDLS survey") allowed the author to obtain data from eighty-five of the 176 geographic dioceses in the United States.⁷ The NDLS survey revealed that where diocesan taxes or assessments are imposed, flat tax rates are used almost four times more frequently than progressive rates. In addition, the information gathered during the survey suggests that several practices regarding diocesan taxation in this country continue to deviate from canon law's requirements.⁸ Given this survey's findings and Catholic social teaching on distributive justice, this article recommends a review of diocesan tax and assessment policies and practices across the country. Where necessary or appropriate, this article respectfully calls for certain changes in those policies and practices, especially the conversion to progressive tax rates. While under canon law only the diocesan bishop can implement any such changes, the faithful, especially those individuals who serve on the diocesan finance council or the presbyteral council, can help to persuade the bishop to re-examine the taxing policies in the diocese.

⁵ Some dioceses use other terminology to refer to amounts that the bishop requires a parish to pay to the diocese to support diocesan operations and priorities, including labels such as "Management Service Fee," "mandatory 'target,'" "parish assessments," "Parish Share goal," "quota," or "taxa." See *infra*, note 132.

⁶ This article addresses only diocesan taxes or assessments under canon 1263 in the United States. See, e.g., Donald J. Frugé, "Diocesan Taxation of Parishes in the United States, Sign of Communio or Source of Tension?," *CLSA Proceedings* 60 (1998) 69. Presumably, however, similar arguments would apply in other countries and throughout the universal Church.

⁷ As mentioned in the introductory footnote, eighty-two dioceses responded to the NDLS survey. Of that group, five dioceses declined to share information about their diocesan taxes or assessments. Diocesan web sites provided facts about diocesan taxes or assessments in eight other dioceses, allowing the author to collect data about the taxing practices in eighty-five dioceses.

⁸ Donald J. Frugé reported similar findings more than twenty years ago, prior to the adoption of the 1983 code. Donald J. Frugé, *The Taxation Practices of United States Bishops in Relation to the Authority of Bishops to Tax According to the Code of Canon Law and Proposed Revisions*, Canon Law Studies 506 (Washington: Catholic University of America, 1982) 138, 139–190 [on file with Catholic University of America Library, University Microfilms International, and the author]. Frugé concludes that various provisions in the 1917 code did not authorize then-existing taxing practices in the United States. Frugé also repeats the claim that "the taxation practices of United States bishops before the present 1983 Code were prohibited by the 1917 Code." See *idem*, "Diocesan Taxation," 73.

Part II of this article examines canon 1263, which was promulgated during the most recent revision of canon law in 1983, and the specific requirements that a diocesan bishop must fulfill before imposing a diocesan tax under that provision. Part III summarizes the results of the NDLS survey on current diocesan taxation practices in the United States and similar findings in three earlier surveys on such practices before Pope John Paul II promulgated the 1983 code. Part IV discusses Catholic social teaching about distributive justice, including those portions of the U.S. Bishops' 1986 pastoral letter on the U.S. economy⁹ that discuss taxation. In that letter, which sought "to articulate a moral perspective in the general societal and economic debate that surrounds [economic decision making]," the bishops specifically listed "research projects in our universities" as among the "appropriate means for continued discussion and action."¹⁰ With some trepidation,¹¹ but after my prayerful reflection, this article asks the bishops, the diocesan finance councils, the presbyteral councils, and the faithful in the United States to consider whether the diocesan tax and assessment policies in their dioceses "flow from the ethical moral vision outlined [in the bishops' 1986 letter]."¹² Part V concludes that Catholic social teaching, including Scripture, papal encyclicals, and other documents of the universal Church, and the bishops' own teachings, plus the general policies supporting progressive taxes, should

⁹ NCCB, "Economic Justice for All" ¶¶ 76, 117, 118, 123, 202, 215. The bishops' letter generated significant controversy and definite criticism. See, e.g., *The Catholic Challenge to the American Economy: Reflections on the U.S. Bishops' Pastoral Letter on Catholic Social Teaching and the U.S. Economy*, ed. Thomas M. Gannon (New York: Macmillan, 1987), presenting various views on the bishops' letter. More recently, some commentators contend that a subsequent papal encyclical has rejected the letter's controlling assumptions. See, e.g., Richard John Neuhaus, "An Argument About Human Nature," in *A New Worldly Order: John Paul II and Human Freedom*, ed. George Weigel (Washington: Ethics and Public Policy Center, 1992) 123–124. Such criticisms, however, do not involve the teaching about tax policies.

¹⁰ NCCB, "Economic Justice for All" ¶ 360, 447. In particular, that letter explicitly mentioned "tax reforms to express the preferential option for the poor" as among the areas for further research. *Ibid.* ¶ 362. More recently, on the tenth anniversary of the bishops' letter, the U.S. bishops again urged Catholic educational institutions to contribute to the common good by their research and educational activities. NCCB, "A Decade after 'Economic Justice for All': Continuing Principles, Changing Context, New Challenges," *Origins* 25 (November 23, 1995) 389.

¹¹ See Stephen M. Bainbridge, "The Bishops and the Corporate Stakeholder Debate," *Villanova Journal of Law and Investment Management* 4 (2002) 4–5. Bainbridge expresses similar apprehension about taking issue with certain aspects of the bishops' pastoral letter on economic justice, but notes that the Church especially encourages lay initiative when the matter involves economic life, and presumably also taxation.

¹² NCCB, "Economic Justice for All" ¶ 360, 447.

convince the bishops in the United States to use progressive rates whenever they impose taxes under canon 1263. In essence, the bishops should practice what the gospel, the universal Church, and they themselves teach. Although beyond the scope of this article, the use of progressive taxation would also enable the bishops in the United States to speak more authentically against the periodically recurring efforts to move to a flat federal income tax.¹³ Finally, the conclusion in part V urges the bishops and the faithful to review the diocesan tax and assessment policies in their dioceses. To facilitate this process, the United States Conference of Catholic Bishops ("USCCB") should consider undertaking a project that would draft one or more "model" progressive diocesan tax systems for diocesan bishops to present to their dioceses for consultation and possible implementation.

II. Canon 1263 and Its Requirements

The 1983 code¹⁴ added canon 1263, which currently serves as "the primary legislation that enables dioceses to tax parishes."¹⁵ According to the leading translation in the United States, the canon, which has been

¹³ See *infra*, note 254 and accompanying text.

¹⁴ John Paul II promulgated the code on January 25, 1983, the feast of the conversion of St. Paul. After a ten-month *vacatio legis*, the period during which the Church temporarily suspended the revised code to give administrators a reasonable amount of time to prepare for the required changes, the code became effective on November 27, 1983, the First Sunday of Advent. John A. Alesandro, "The Revision of the *Code of Canon Law*: A Background Study," *Studia Canonica* 24 (1990) 129–130. Alesandro's work also provides an excellent overview discussing the general process of the revision of the 1917 code.

¹⁵ Frugé, "Diocesan Taxation," 77. Other provisions in canon law allow a bishop to impose other taxes on the parishes in his diocese. See Robert L. Kealy, "Taxation, Assessments and Extraordinary Collections," in *Church Finance Handbook*, ed. Kevin E. McKenna et al. (Washington: CLSA, 1999) 79. For example, canon 264, §1 allows the bishop to impose a seminary tax. Donald J. Frugé notes that commentators sometimes refer to the fees that a bishop may charge for various administrative acts, judicial costs, stole fees, or Mass offerings as taxes. Frugé, 68, n. 4; see also canon 1264, §1 (administrative fees) and canon 1649 (judicial fees). I agree with those commentators who view such fees not as revenues or taxes, but as reimbursements for expenses incurred. See, e.g., Kealy, 88. The NDLS survey documents that some dioceses pass-through to the parishes certain costs, such as the salaries, benefits, and travel expenses of the chaplains who staff area hospitals and long-term care facilities, but do not consider the "reimbursements" as taxes or assessments. See, e.g., NDLS Survey Response No. 51. If these dioceses in fact act as "the agent" of the parishes in such a program, then the reimbursement characterization seems appropriate. If, however, the bishop requires a parish to participate in such a diocesan program, then the underlying assessment must satisfy the requirements of canon 1263. See *infra*, notes 35–129 and accompanying text.

described as “the most significant and the most controversial canon in Book V on Temporal Goods,”¹⁶ provides:

After the diocesan bishop has heard the finance council and the presbyteral council, he has the right to impose a moderate tax for the needs of the diocese upon public juridic persons subject to his governance; this tax is to be proportionate to their income. He is permitted only to impose an extraordinary and moderate exaction upon other physical and juridic persons in case of grave necessity and under the same conditions, without prejudice to particular laws and customs which attribute greater rights to him.¹⁷

¹⁶ Robert L. Kealy, *Diocesan Financial Support: Its History and Canonical Status*, J.C.D. diss. (Rome: Pontificia Universitas Gregoriana, 1986) 310 [on file with author]; see also Frugé, “Diocesan Taxation,” 69.

¹⁷ *New Commentary*, 1463. Interestingly, the CLSA also published an earlier, but similar, translation as follows:

The diocesan bishop has the right to impose a moderate tax on public juridic persons subject to his authority; this tax, which should be proportionate to their income, is for diocesan needs and may be imposed only after hearing the diocesan finance council and the presbyteral council; he can impose an extraordinary and moderate tax on other physical and juridic persons only in cases of grave necessity and under the same conditions with due regard for particular laws and customs attributing even more significant rights to him.

The Code of Canon Law: A Text and Commentary, ed. James A. Coriden et al. (New York: Paulist Press, 1985) 865.

Other English translations use slightly different language. For example, the translation that The Canon Law Society of Great Britain and Ireland prepared in association with The Canadian Canon Law Society states:

The diocesan Bishop, after consulting the finance committee and the council of priests, has the right to levy on public juridical persons subject to his authority a tax for the needs of the diocese. This tax must be moderate and proportionate to their income. He may impose an extraordinary and moderate tax on other physical and juridical persons only in a grave necessity and under the same conditions, but without prejudice to particular laws and customs which may give him greater rights.

The Canon Law: Letter & Spirit, ed. Gerald Sheehy et al. (Collegeville, MN: Liturgical Press, 1995) 712; see also *Code of Canon Law Annotated*, ed. Ernesto Caparros et al. (Montréal: Wilson and Lafleur Limitée, 1993) 780–781. Finally, Robert L. Kealy, who has written extensively on this subject, offers this similar translation:

Canon 1263, therefore, offers a diocesan bishop two important sources of tax revenues.¹⁸ The canon designates the second of these

The diocesan bishop, having consulted the finance council and the presbyteral council, has the right to impose on public juridic persons subject to his governance a moderate tax, proportionate to their income, for the needs of the diocese; it is also lawful for him, in case of grave necessity and under the same conditions, to impose an extraordinary and moderate exaction on physical persons and other juridic persons, without prejudice to particular laws and customs which grant him greater rights.

Kealy, *Diocesan Financial Support*, 311.

Although the differences in language between the various translations do not appear significant, the original and newer Latin versions in the CLSA's Latin-English edition use a semicolon to separate the two taxes authorized in canon 1263. Frugé, "Diocesan Taxation," 69. For a further discussion of the possible implications of this distinction in punctuation, see *infra*, note 127 and accompanying text. The original Latin version of canon 1263 provides:

Ius est Episcopo dioecetano, auditis consilio a rebus oeconomicis et consilio presbyterali, pro dioecesis necessitatibus, personis iuridicis publicis suo regimini subiectis, moderatum tributum, earum redditibus proportionatum, imponendi; ceteris personis physicis et iuridicis ipsi licet tantum, in casu gravis necessitatis et sub iisdem condicionibus, extraordinariam et moderatam exactionem imponere, salvis legibus et consuetudinibus particularibus quae eidem potiora iura tribuant.

CLSA, *Code of Canon Law: Latin-English Edition* (Washington: CLSA, 1995) 450. The most recent Latin version deletes a comma in the third line of text as follows:

Ius est Episcopo dioecetano, auditis consilio a rebus oeconomicis et consilio presbyterali, pro dioecesis necessitatibus, personis iuridicis publicis suo regimini subiectis moderatum tributum, earum redditibus proportionatum, imponendi; ceteris personis physicis et iuridicis ipsi licet tantum, in casu gravis necessitatis et sub iisdem condicionibus, extraordinariam et moderatam exactionem imponere, salvis legibus et consuetudinibus particularibus quae eidem potiora iura tribuant.

CLSA, *Code of Canon Law: Latin-English Edition, New English Translation* (Washington: CLSA, 1998) 390–391. Most significantly for the purposes of this article, one should observe that the leading translation in the United States uses separate sentences for the two taxes, while the Latin text places a semicolon between the different exactions. See *New Commentary, supra*.

¹⁸ In addition to taxes and fees, other ways to raise funds for the diocese include free-will offerings (c. 1262), special collections (c. 1266), and pious wills and bequests (c. 1299). See Kealy, "Taxation," 79. In fact, diocesan taxes or assessments under canon 1263 typically depend in large measure upon voluntary offerings from the faithful, which provide the main source of revenue for most parishes in this country. *Ibid.*, 86. As an initial

exactions as “extraordinary.” Although canon law does not use the label, commentators often refer to the first levy as an “ordinary tax.”¹⁹ Before we can analyze canon 1263’s specific requirements for the so-called “ordinary” and extraordinary taxes, we must understand the entire provision’s present and historical context.

Because the 1917 code did not contain any “real equivalent”²⁰ to canon 1263, one leading commentary describes that provision as “a

matter, canon 1262 calls upon the faithful to contribute to the Church’s support by responding to fund-raising appeals and according to the norms that the conference of bishops establishes. At the NCCB’s general meeting in November 1984, the bishops approved a complementary norm under canon 1262 that authorizes diocesan bishops in this country to establish such norms for the faithful in their own dioceses. USCCB, “Canon 1262 – Fund-Raising,” in *Index of Complementary Norms* [database on-line] (USCCB, 2002, visited July 28, 2004); available from <http://www.usccb.org/norms/1262.htm>. Several commentators have suggested that the fact that this canon on so-called “free will offerings” precedes canon 1263, the canon on taxation, “accords primacy to free-will offerings given in response to fund-raising appeals” and documents canon law’s preference for the former. Robert T. Kennedy, “Book V: The Temporal Goods of the Church,” in *New Commentary*, 1463; see also Frugé, “Diocesan Taxation,” 74, n. 26. In addition, canon 1266 gives a bishop the authority to order special collections for specific parochial, diocesan, national, or universal projects. If either a diocesan “free-will” appeal or special collection imposes a mandatory goal, quota, or target on a parish, I agree with other commentators who conclude that the requirements in canon 1263 apply. Frugé, *Taxation Practices*, 134; Kealy, *Diocesan Financial Support*, 341–342; Kennedy, “Book V,” 1465.

¹⁹ See, e.g., Kennedy, “Book V,” 1463; see also Frugé, “Diocesan Taxation,” 69; see also *infra*, note 35 and accompanying text.

²⁰ Francis G. Morrissey, in *Letter & Spirit*, 712, n. 2. The leading commentary on the code in the United States concludes that previous texts have “amply traced” the canon’s legislative history. Kennedy, “Book V,” 1463, n. 39, citing Kealy, *Diocesan Financial Support*, 312–330, and Frugé, “Taxes in the Proposed Law,” *CLSA Proceedings* 44 (1982) 279–287; see also Frugé, “Diocesan Taxation,” 69–74. Two commentators credit the late Cardinal John Krol of Philadelphia and the late Cardinal Joseph Bernardin, then the Archbishop of Cincinnati, respectively, for first proposing and then supporting the reformulated text that eventually led to canon 1263 at the October 1981 plenary meeting of the Commission for the Revision of the Code of Canon Law (the “Revision Commission”). Frugé, “Diocesan Taxation,” 72–73; see also Kealy, 325–329. At the plenary session, Cardinal Krol argued:

In many dioceses in the United States of America and in other regions, there is the legitimate custom of a moderate and proportionate diocesan tax, which system of taxes for parishes also gives the Archdiocese of Philadelphia the ability of ministering to our portion of the people of God with annual expenses needing to be met in excess of two hundred million American dollars and of contributing to the domestic and foreign missions and various charities and similar works. *Ibid.*, 327.

Although the 1917 code does not contain a predecessor provision to canon 1263, canons 1502 and 1504 to 1506 of the 1917 code provide some background. *Letter & Spirit*

substantial innovation in the Church's law."²¹ Given significant changes in the way Vatican II viewed the Church's temporal goods and pastoral structure relative to the benefice system²² underlying the 1917 code, other commentators have described canon 1263 as a "radical departure from a long canonical tradition,"²³ a "dramatic development from the revenue-raising powers accorded the bishop in the 1917 Code,"²⁴ and "a return to an older canonical tradition [based on] the communitarian nature of ecclesiastical assets."²⁵

The 1917 code presumed that endowment income from benefices would provide much, or perhaps even most, financial support for the Church.²⁶ Under that benefice system, the Church essentially "looked on the income of a parish (or diocese) primarily as a means of support for

it, *supra*. Canon 1502 of the 1917 code called upon the faithful to observe the special laws or customs in their area that might require them to pay tithes or first-fruits, but did not contain any general provision that required their payment. Kealy, 184.

In fact, the 1917 code severely limited a diocesan bishop's power to tax. Kennedy, 1463. Canon 1504 required every church and benefice subject to the bishop's jurisdiction to pay a "modest financial tribute," known as the *cathedraticum*, as a sign of subjection to the bishop. John J. Myers, "The Temporal Goods of the Church," in *The Code of Canon Law*, ed. Coriden, 866, also observing that while the *cathedraticum* "was not normally part of the life of the Church in the United States, . . . diocesan assessments have been sometimes designated improperly as such"; Kealy, 184–185. By comparison, canon 1505 allowed the local bishop to impose an extraordinary and moderate tax to satisfy a special diocesan need. *Ibid.*, 187. Commentators on the 1917 code customarily referred to this tax as the *subsidium caritativum*. Myers, 865. Finally, canon 1506 allowed a bishop to impose a tax on churches, benefices, and other ecclesiastical institutions on the occasion of their foundation or consecration. Kealy, 191. Canon 1506 of the 1917 code also stipulated that the bishop could not levy a tax on Mass stipends. *Ibid.*, 198. Although the Revision Commission expressed its intent to maintain this rule, the prohibition does not appear in the promulgated code. One commentary has asserted that "such a significant omission leaves open the possibility that a diocesan bishop could tax the income which priests serving in his diocese receive from Mass stipends." Myers, 866. At least one other commentary, however, disagrees, opining that any effort to tax such stipends under canon 1263 would constitute "an abuse." *Letter & Spirit*, 713.

²¹ Francis G. Morrissey, in *Letter & Spirit*, 712; see also Frugé, "Diocesan Taxation," 69.

²² Under the benefice system, which developed during feudal times, the beneficeholder, often the pastor of a particular parish, could use the income from the benefice, which we might describe as an endowment today, to support the activities of the particular parish, including his own support. Kealy, "Taxation," 78.

²³ Frugé, "Diocesan Taxation," 69; see also *idem*, "Taxes in the Proposed Law," 274.

²⁴ Kealy, *Diocesan Financial Support*, 311–312.

²⁵ See Kealy, "Taxation," 78.

²⁶ Myers, "Temporal Goods of the Church," 865.

the [person] who held the office of pastor.”²⁷ In addition, the Church considered the parish’s assets as belonging to that parish and that parish alone.²⁸ As a result, each parish, and its pastor, enjoyed considerable financial autonomy, which sometimes led to actions or decisions that favored the pastor’s or the parish’s financial desires rather than the needs of the poor or the universal Church.²⁹ By comparison, the 1983 code reflects the ecclesiological perspective of Vatican II, which retrieved the ancient understanding of the diocese as a particular church in its own right.³⁰ Consistent with this theological perspective, the 1983 code abrogated the feudal understanding of the parish as primarily a benefice for the pastor. It envisions the parish as a stably constituted community of the Christian faithful and basic unit of the diocese.³¹ Accordingly, canon 1263 recognizes an individual parish’s “obligation to the wider ecclesial community.”³² This perspective accords with the teaching of Vatican II that considers the Church’s temporal goods “as a common patrimony meant to serve ecclesial communion as well as the particular ends of certain individuals or groups.”³³ Both Vatican II and the 1983 code, therefore, understand the diocesan bishop as the overall pastor of the particular church and call him to oversee a more equitable distribution of the temporal goods within the diocese, while also asking him to keep in mind the Church’s needs outside his diocese.³⁴ Given this context, we can proceed to discuss the two taxes that canon 1263 authorizes, beginning with the ordinary tax.

A. So-Called “Ordinary” Taxes

Canon 1263 sets forth at least six different limitations before a bishop can legitimately impose an ordinary tax.³⁵ Those limitations provide the

²⁷ Kealy, “Taxation,” 78.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Canon 368 describes particular churches, especially dioceses as the basic communal units “in which and from which exists the one and unique Catholic Church.” See also Myers, “Temporal Goods of the Church,” 865; Frugé, “Diocesan Taxation,” 80.

³¹ See 1983 code c. 515, §1.

³² Francis G. Morrissey, in *Letter & Spirit*, 712.

³³ See Kealy, “Taxation,” 78.

³⁴ Ibid., 78–79.

³⁵ Because the requirements for the first tax in canon 1263 neither refer to grave necessity nor designate the tax as “extraordinary,” Kennedy concludes that the tax can serve as a “regularly recurring means of raising funds to meet regularly recurring diocesan needs.” Kennedy, “Book V,” 1463. Kennedy posits that the canon does not use the word “ordinary” in an effort “to give primacy to voluntary responses to fund-raising appeals as the preferred mode of acquisition,” reasoning that any reference to an “ordinary tax”

answers to the following questions: (1) who can impose the tax (the "diocesan bishop"), (2) who must pay the tax ("public juridic persons subject to his governance"), (3) what can the diocesan bishop tax ("their income"), (4) to what extent can the bishop impose the tax (the tax must qualify as both "moderate" and "proportionate to income"), (5) for what purpose does the tax apply (to finance "the needs of the diocese"), and (6) after what, if any, consultation ("after the diocesan bishop has heard the finance council and the presbyteral council").³⁶ Commentators have opined that the bishop may impose either a permanent or temporary exaction under canon 1263, but that he must issue a decree adapting the tax to canon law.³⁷ Presumably, such a decree must specify precisely those juridic persons subject to taxation, define assessable income, state the applicable tax rates or percentages, describe the tax's destination, and articulate the reasons for the decree.³⁸ A more detailed discussion of the six different limitations on "ordinary" taxes follows.

1. The Diocesan Bishop

Only "the diocesan bishop" may impose the ordinary tax under canon 1263.³⁹ Under canon 376, the term "diocesan bishop" means a bishop to whom the pope has entrusted the care of a diocese.⁴⁰ Notably, the term does not include auxiliary bishops, who are often called "titular bishops" because the pope has assigned them to a diocese that at one time flourished, but that now exists only in name.⁴¹

might suggest that such a tax would function as "an expected or preferred mode of acquiring needed funds." Ibid. An earlier version of that text, however, expressed a slightly different perspective that saw the ordinary means of support as including both an annual fund-raising drive and an annual tax or parish assessment. Myers, "The Temporal Goods of the Church," 865: "the lack of restrictions plus the designation of a secondary and extraordinary tax later in the canon favor the interpretation that this tax may be an ordinary means of diocesan support."

³⁶ Kennedy, "Book V," 1463.

³⁷ Mariano Lopez Alarcón, in *Code of Canon Law Annotated*, 781.

³⁸ Ibid. In addition, a change in any of these elements presumably results in an amendment to the tax that requires a new consultation with both the finance and presbyteral councils. See Kealy, "Taxation," 77, 90 (case 15).

³⁹ Kennedy, "Book V," 1463. Section 2 of canon 381, however, treats those individuals who preside over the other communities of the faithful mentioned in canon 368 as "equivalent in law to a diocesan bishop" in certain contexts. In "quite extraordinary circumstances," a leading text suggests that the diocesan administrator, elected according to canon 421, could also impose a tax. Morrissey, in *Letter & Spirit*, 712, n. 5.

⁴⁰ Canon 376 refers to all other bishops as *titular*. See also Kealy, *Diocesan Financial Support*, 295.

⁴¹ Kevin E. McKenna, *A Concise Guide to Canon Law* (Notre Dame: Ave Maria Press, 2000) 116, 124.

2. Public Juridic Persons Subject to His Governance

The diocesan bishop can impose an ordinary tax under canon 1263 only on *public juridic persons*,⁴² most notably parishes, “subject to his governance.” The term “public juridic persons” can include dioceses; conferences of bishops; parishes; religious institutes or societies of apostolic life and their provinces and houses; seminaries; certain colleges, universities, or hospitals; and other educational, charitable, or apostolic groups.⁴³ The ordinary tax in canon 1263, however, applies only to those public juridic persons “subject to [the diocesan bishop’s] authority.” Canon law, for example, grants autonomy of governance to all religious institutes and apostolic societies even though they remain subject to the

⁴² Because the ordinary tax applies only to “public juridic persons,” a brief discussion about the term “juridic persons” and the distinction between “public” and “private” juridic persons seems appropriate here. Section 2 of canon 113 recognizes the existence of juridic persons; but the code does not define the term, “leaving [its] definition to canonical jurisprudence.” Robert T. Kennedy, “Physical and Juridic Persons,” in *New Commentary*, 154. As additional background, canon 116 distinguishes between public juridic persons and private juridic persons. Two important distinctions require explanation if we are to understand that differentiation. First, apostolic undertakings often require the combined efforts of various individuals over their collective lifetimes. Like civil society, the Church creates artificial entities known as “juridic persons” and recognizes their perpetual existence to afford continuity and stability for those undertakings. *Ibid.*, 155. As perpetual and artificial entities, juridic persons enjoy a legal life beyond that of any of the natural persons who might constitute them. In that sense, juridic persons resemble corporations in civil society. *Ibid.*; see also Kealy, *Diocesan Financial Support*, 299. Canon law gives these juridic persons certain rights and binds them to various obligations. 1983 code c. 113, §2. By comparison, natural persons—whether considered individually or collectively—enjoy no rights and face no obligations beyond what they experience as individuals. Kealy, 297.

Second, a public juridic person essentially differs from a private juridic person in its relationship to the Church’s hierarchy in at least two important ways. Initially, ecclesiastical authority forms and closely governs a public juridic person. In that regard, a public juridic person typically originates when a competent ecclesiastical authority establishes the organization. By comparison, a private juridic person arises when the private right of association motivates various members of the faithful to come together for a specific purpose. Kennedy, 161–162; see also Kealy, 302. Secondly, private juridic persons enjoy more autonomy in their governance, even though subject to ecclesiastical authority in certain respects. Kennedy, 162. Accordingly, public juridic persons act “in the name of the Church” because only those persons whom the Church commissions to act in its name can genuinely so act. 1983 code c. 116, §1; see also Kennedy, 161–162. In contrast, a private juridic person can act only in its own name and not in the name of the Church. *Ibid.*, 162.

As a potential third distinction, the competent ecclesiastical authority entrusts a public juridic person with a specific task to support the public good. By comparison, the public good may provide only a secondary concern for a private juridic person. See Kealy, 302.

⁴³ Kennedy, “Physical and Juridic Persons,” 154; see also Kealy, *Diocesan Financial Support*, 304–305.

bishop's power regarding the public exercise of divine worship and in matters regarding the care of souls or other works of the apostolate.⁴⁴ If the diocesan bishop, however, entrusts the apostolic care of a diocesan parish or institution to a religious institute or apostolic society, the parish or institution typically remains subject to the bishop's governance and, therefore, to taxation under canon 1263.

Regardless of the exact parameters of the term "public juridic person," a key question arises in its application: must the bishop impose the ordinary tax on all public juridic persons equally or may he distinguish a certain class or type of juridic person?⁴⁵ Kealy has defensibly concluded that a bishop may impose a tax only on the members of a certain class, as long as the bishop observes "natural equity."⁴⁶

3. *Based upon "Income"*

Canon 1263 expressly limits the ordinary tax to levies based upon "income," but does not specify how the diocesan bishop should or must determine the "income" to which the diocesan tax or assessment applies. This article will refer to that income subject to tax as "assessable income." In any event, a diocesan bishop must define or establish a methodology for determining that assessable income, a process that requires the bishop to address and resolve certain fundamental questions.⁴⁷ Even though the code does not specifically address whether the bishop must base a diocesan tax or assessment exclusively on income, commentators agree that the code prohibits per capita taxes and the small fixed amounts called the *cathedraticum*.⁴⁸

a. *Determination of Assessable Income*

In defining assessable income, a bishop must first decide what amounts to include in what this article terms "otherwise reportable income." Next, the bishop must spell out which exclusions or deductions, if any, the public juridic person can subtract from otherwise reportable income to calculate assessable income. Although the NDLS survey de-

⁴⁴ See 1983 code cc. 586, 594, 678; see also Kealy, "Taxation," 81.

⁴⁵ Kealy, *Diocesan Financial Support*, 332; see also idem, "Taxation," 81.

⁴⁶ Ibid. Kealy, however, does not define or explain the term "natural equity." For a discussion of that term, see John J. Coughlin, "Canonical Equity," *Studia Canonica* 30 (1996) 423, who addresses the meaning of "equity," "natural equity," and "canonical equity" in the 1983 code.

⁴⁷ Frugé, "Diocesan Taxation," 81.

⁴⁸ See *infra*, notes 78–81 and accompanying text for further information and discussion about these prohibited practices.

scribed in more detail in part II did not specifically ask how the dioceses define assessable income, the responses document that the bishops in the United States use a wide variety of methods to determine assessable income.

Taxation systems often influence behavior. Bishops and the faithful should keep in mind, therefore, that any exclusions or deductions underlying the computation of assessable income can encourage the public juridic persons in their dioceses, especially parishes, to engage in desired activities or to fund certain programs—or not. That is, such provisions can potentially discourage otherwise desirable activities or programs.

Two other preliminary considerations merit mention at this time. First, to eliminate ambiguity and to ensure consistency any tax decree should specify what method of accounting applies to compute assessable income. Most dioceses appear to use the cash method to compute diocesan taxes or assessments. Under the cash method, a parish would not report income until received and would wait until actually paying expenses to subtract them in determining assessable income. Under the accrual method, by comparison, the parish would report income when pledged or earned and deduct expenses when incurred. The fact that a pledge could require a parish to pay a tax long before the contributor satisfies the pledge helps to explain why most dioceses use the cash method for diocesan taxes.

Second, the taxing decree should also specify what period the diocese will use to calculate assessable income and how often the diocese will expect public juridic persons to remit the taxes and assessments. In at least one diocese, the bishop uses average assessable income over a five-year period to determine the amount subject to tax.⁴⁹ Policies, however, vary. To compute the tax, dioceses may direct parishes to use actual, budgeted, or otherwise estimated income and expenses for the current period, whether a month or a year; the actual or estimated amounts from the previous period;⁵⁰ or the actual sums from the second preceding period;⁵¹ or some combination of these alternatives.⁵² In some dioceses, parishes must remit the tax on a monthly basis.⁵³ Other dioceses may

⁴⁹ See, e.g., NDLS Survey Response No. 85.

⁵⁰ See, e.g., NDLS Survey Response No. 52.

⁵¹ See, e.g., NDLS Survey Response No. 8.

⁵² See, e.g., NDLS Survey Response No. 36. This diocese used the previous month's actual revenue, the previous month's actual expenses for some items, and the average monthly budgeted annual school expense and debt service for the current fiscal year.

⁵³ See, e.g., NDLS Survey Response Nos. 17 and 77.

allow quarterly installments,⁵⁴ or even semi-annual or annual payments.⁵⁵

i. Otherwise Reportable Income

As a starting point, the bishop must decide exactly what revenues and any other amounts to treat as “otherwise reportable income” before any exclusions or deductions. Should the term “otherwise reportable income” mean: (1) all cash or other receipts, (2) all cash or other receipts except enumerated exclusions—a so-called “nonexcludable receipts” approach, (3) only certain listed items of so-called “includable receipts,” or (4) some other measure? Do any special circumstances in the diocese involving more than one juridic person suggest that the bishop attempt to clarify exactly which entity must include an amount as otherwise reportable income in certain situations?⁵⁶ Should the term otherwise reportable income include some adjustment for any assets that might increase the public juridic person’s ability to pay the tax or assessment?⁵⁷

Again, diversity in practice exists across the dioceses in the United States. Some dioceses broadly define otherwise reportable income, using terminology such as “all contributions and church income;”⁵⁸ “all income from wha[t]ever source;”⁵⁹ “all parish receipts;”⁶⁰ “gross income;”

⁵⁴ See, e.g., NDLS Survey Response Nos. 10 and 38.

⁵⁵ Dioceses that assign mandatory goals, quotas, or targets for their annual appeals seemingly collect the tax under canon 1263 applies only to public juridic persons subject to the bishop’s authority, a public juridic person subject to the tax may try to shift income to a “related” public juridic person not subject to the bishop’s authority, a “related” private juridic person, or to a public juridic person subject to a lower tax rate. For example, the church for a university operated by a religious order that enjoys autonomy of governance from the local bishop may also serve a diocesan parish that remains subject to the bishop’s authority. In such a situation, the allocation of revenues and related expenses between the university and the parish could affect the parish’s otherwise reportable income subject to the diocesan tax. See *supra*, notes 42–44 and accompanying text.

⁵⁶ Because the tax under canon 1263 applies only to public juridic persons subject to the bishop’s authority, a public juridic person subject to the tax may try to shift income to a “related” public juridic person not subject to the bishop’s authority, a “related” private juridic person, or to a public juridic person subject to a lower tax rate. For example, the church for a university operated by a religious order that enjoys autonomy of governance from the local bishop may also serve a diocesan parish that remains subject to the bishop’s authority. In such a situation, the allocation of revenues and related expenses between the university and the parish could affect the parish’s otherwise reportable income subject to the diocesan tax. See *supra*, notes 42–44 and accompanying text.

⁵⁷ In response to the NDLS survey, one diocese reported that parishes must add twenty percent of certain year-end investments to “parish income” to calculate “adjusted income.” NDLS Survey Response No. 52. Another diocese requires parishes with elementary schools to add total cash in the school account at year-end to determine adjusted income. NDLS Survey Response No. 71.

⁵⁸ NDLS Survey Response No. 10.

⁵⁹ NDLS Survey Response No. 23. This diocese later deducts certain fixed amounts for students at the parochial school, at a consolidated school, and in the religious education program.

⁶⁰ NDLS Survey Response No. 16. This diocese’s tax program, however, specifically states that “ordinary school income is not taxed.”

an amount that specifically includes school tuition;⁶¹ “total ordinary income;”⁶² “total parish receipts;”⁶³ or “total revenue,” another label that specifically includes tuition.⁶⁴ Other dioceses, in turn, exclude school revenues from an otherwise expansive definition.⁶⁵ Income under such a broad definition would include bequests; investment income; net proceeds from fund-raising efforts, including bingo and other gambling revenue; gains from the sale of property; grants; and rebates from the diocese’s annual appeal.⁶⁶ This more inclusive definition of income should not encompass loan distributions, rebates, reimbursements of current expenses, or transfers;⁶⁷ probably would not include Mass stipends;⁶⁸ and might not include insurance settlements.⁶⁹

Some dioceses tax only Sunday collections⁷⁰ or Sunday and Holy Day collections.⁷¹ At least one diocese adds school tuition to Sunday collections and unrestricted gifts to compute its tax base.⁷²

ii. Exclusions and Deductions

After defining otherwise reportable income, the bishop must consider what, if any, exclusions or deductions a public juridic person may subtract in computing assessable income subject to tax. At least one other commentator has concluded that any diocesan tax or assessment should not simply operate as a tax on gross receipts, reasoning that fairness requires a bishop to consider other factors affecting a juridic person’s financial situation and ability to pay.⁷³

Assuming that an item falls within the definition of otherwise reportable income, canon 1263 implicitly allows the bishop to exclude

⁶¹ NDLS Survey Response No. 32. This diocesan policy then allows all educational expenses as a deduction.

⁶² NDLS Survey Response No. 20. This amount specifically includes “ordinary school income.” The formula later allows a parish to deduct one-half of school expenses.

⁶³ NDLS Survey Response No. 18. This diocese subsequently allows a deduction for school receipts.

⁶⁴ NDLS Survey Response No. 36. This diocese allows a later adjustment for school expenses.

⁶⁵ See *supra*, note 60.

⁶⁶ See, e.g., NDLS Survey Response Nos. 10, 32, 36, and 46.

⁶⁷ See, e.g., NDLS Survey Response Nos. 10, 16, and 32.

⁶⁸ See *supra*, note 20.

⁶⁹ See, e.g., NDLS Survey Response Nos. 10, 16, and 46.

⁷⁰ See, e.g., NDLS Survey Response Nos. 50, 63, and 67.

⁷¹ See, e.g., NDLS Survey Response Nos. 6, 43, and 77.

⁷² See NDLS Survey Response No. 26.

⁷³ See Kealy, *Diocesan Financial Support*, 335.

amounts arising from special collections, school tuition, capital campaigns, bequests, contributions in kind, contributions to or transfers from building funds, insurance settlements, or other sources from assessable income subject to tax.⁷⁴ Similarly, a bishop could allow various deductions in computing the public juridic person's assessable income. For example, the bishop could exclude poorer parishes from the tax by providing a standard deduction,⁷⁵ say \$100,000 per year, which would effectively subject only those parishes with assessable income above that amount to the tax under canon 1263. In addition, the bishop could allow deductions for amounts used to support parish, regional, or diocesan schools; payments to service debt obligations; or other qualifying expenditures, such as costs for capital improvements or additions.⁷⁶ These exclusions and deductions both reduce the amount of assessable income. But adjustments to otherwise reportable income can also work the other way. Perhaps in an effort to close a loophole under canon law, at least two dioceses require parishes to add certain deposits or investments to otherwise reportable income in computing the amount of assessable income.⁷⁷

Because canon 1263 requires any diocesan tax or assessment to qualify as "proportionate to income," canon law does not expressly authorize the bishop to consider a taxpayer's assets in determining the ability to pay. A parish with little current income, but significant wealth, enjoys the ability to pay taxes. For this reason, the next revision of the code should specifically authorize diocesan taxes or assessments based on ability to pay, rather than income alone. In determining whether a parish enjoys significant wealth or ability to pay, canon law should allow the bishop to exclude certain assets, such as churches, schools, separate funds established to replace or maintain such facilities, or illiquid assets, either partially or in their entirety.

b. Certain Prohibited Practices

Notwithstanding considerable flexibility about the definition of "income," canon 1263 prohibits two practices that bishops might otherwise use to compute a diocesan tax or assessment because they do not qualify as "proportionate to income." First, the 1983 code prevents a bishop from imposing a *cathedraticum*,⁷⁸ which traditionally refers to a small fixed

⁷⁴ See, e.g., NDLS Survey Response Nos. 9, 10, 16, 32, and 46.

⁷⁵ See, e.g., NDLS Survey Response Nos. 7 and 57.

⁷⁶ See, e.g., NDLS Survey Response Nos. 7, 14, 20, 23, 38, and 41.

⁷⁷ NDLS Survey Response Nos. 52 and 71.

⁷⁸ For more history about the *cathedraticum*, see *supra*, note 20, which observes that in his intervention before the Revision Commission, Cardinal Krol relied upon *custom*,

amount, say ten dollars, that a parish and its pastor paid annually to the diocesan bishop as a sign that they subjected themselves to his governance. Canon 1504 of the 1917 code expressly authorized this *cathe-draticum*. The 1983 code, however, particularly canon 1263, superseded the old canon 1504.⁷⁹ Under the 1983 code, the tax under canon 1263 supplies that same act of subjection, but also conveys participation and expresses *communio*.⁸⁰ In other words, by paying the diocesan tax, a parish signifies its participation in a larger community, namely the diocese, within the universal Church and recognizes its dependence within that larger body.

Second, canon 1263 does not allow per capita taxes, or assessments that levy a fixed amount on each person or taxpayer subject to the exaction. Because canon 1263 requires diocesan taxes and assessments to qualify as “proportionate to income,” that language disqualifies any system that bases the tax, whether in whole or in part, on the number of parishioners, families, envelope holders, contributing parishioners or families, or students in the diocesan schools.⁸¹

4. Requirements for Tax Rates—Moderate and Proportionate to Income

Beyond the requirement that the bishop base any diocesan tax or assessment under canon 1263 on income, that canon expressly imposes two additional limitations regarding tax rates. Under canon law, any ordinary tax must qualify as both *moderate* and *proportionate to income*.⁸² In addition, this article argues that the policies underlying canon 1263 dictate that only differences in ability to pay should justify variances in tax rates.

a. Moderate

According to Kealy, the adjective “moderate” requires that the tax qualify as reasonable in relation to the economic situation of the parish

rather than a specific provision in the 1917 code, to justify a moderate and proportionate diocesan tax found in many dioceses in the United States and in other regions at that time. Kealy, “Diocesan Financial Report,” 327: “In many dioceses in the United States of America and in other regions, there is the legitimate custom of a moderate and proportionate diocesan tax . . . ;” see also Frugé, “Diocesan Taxation,” 73, n. 25.

⁷⁹ Kealy, “Taxation,” 89.

⁸⁰ Frugé, “Diocesan Taxation,” 80.

⁸¹ Kealy, “Taxation,” 77, 90 (case 13); see also *Code of Canon Law Annotated*, 780.

⁸² See *supra*, note 17 and accompanying text.

or public juridic persons subject to the tax.⁸³ Kealy has opined that “a thirty percent tax on parish income would not be moderate.”⁸⁴ Another leading, but somewhat dated, commentary predicts that the “specific traditions and the degrees of centralization of certain functions and services in each diocese will help provide the context in which [the term] ‘moderate’ will be interpreted.”⁸⁵ As a corollary, the level of the tax raises important questions about the degree of centralization or decentralization within the diocese and the relationship between the diocese and its parishes, issues that affect the life of that particular church.⁸⁶ Presumably, both the finance council and the presbyteral council will help to define what qualifies as “moderate” within each diocese. Less ideally, the USCCB or a more local conference such as a provincial council might establish national or regional norms.

b. Proportionate to Income

When tax professionals use the term “proportionate,” they usually refer to a flat tax.⁸⁷ Given Catholic social teaching, however, an obvious question arises: does canon 1263 authorize progressive taxation?⁸⁸ The

⁸³ Kealy, *Diocesan Financial Support*, 334.

⁸⁴ See Kealy, “Taxation,” 90 (case 14).

⁸⁵ Myers, “Temporal Goods of the Church,” 866. This commentary observes that canon 1356 of the 1917 code used a maximum amount of five percent for the seminary tax, but also notes that canonists dispute the base for figuring that tax.

⁸⁶ See Frugé, “Diocesan Taxation,” 78–81.

⁸⁷ See, e.g., Joseph Bankman and Thomas Griffith, “Social Welfare and the Rate Structure: A New Look at Progressive Taxation,” *California Law Review* 75 (1987) 1908, noting that “under a proportionate, or ‘flat,’ tax, the percentage of income paid to the government remains constant as income rises;” Walter J. Blum and Harry Kalven, Jr., “The Uneasy Case for Progressive Taxation,” *University of Chicago Law Review* 19 (1952) 419: “a proportionate tax, for example on income, is one which taxes each dollar of income at the same rate regardless of the total income of the taxpayer . . . ;” Donna M. Byrne, “Progressive Taxation Revisited,” *Arizona Law Review* 37 (1995) 744; Marjorie E. Kornhauser, “Equality, Liberty, and a Fair Income Tax,” *Fordham Urban Law Journal* 23 (1996) 607.

⁸⁸ As noted earlier, see *supra*, note 3, the term “progressive” can describe changes in either marginal or effective tax rates. The marginal tax rate refers to percentage imposed on the last increment, typically a dollar, of taxable income. By comparison, dividing the total amount of tax by the total income determines the effective, or average, rate. Increasing marginal rates always produce progressive effective rates. In addition, however, granting an exemption to all taxpayers in a system that uses a single or flat rate automatically produces a progression of effective tax rates. Once taxpayers’ incomes exceed the exemption amount, a progressively larger fraction becomes subject to tax. In essence, the effective rates in such a system vary from zero percent at all incomes up to the exemption amount to a rate that approaches, but never quite reaches, the single flat rate as income

commentators seem to agree that a bishop could impose progressive tax rates under the canon.⁸⁹ Robert T. Kennedy, the author of the leading American commentary on Book V of the Code of Canon Law, states that “nothing would appear to preclude the tax from being a graduated income tax.”⁹⁰ Such graduated rates, coupled with spending policies that benefit the poor—or at least do not benefit wealthy parishes—would allow the bishop to redistribute financial resources from wealthy parishes to poorer ones and from richer dioceses to more destitute dioceses.⁹¹

c. Other Practices Regarding Computation of Diocesan Taxes

As discussed earlier, a bishop enjoys broad discretion to allow exclusions and deductions to reduce the amount of assessable income and to establish various tax rates based upon ability to pay in computing the underlying tax. The NDLS survey, however, also reveals that dioceses use a wide variety of other provisions unrelated to the ability to pay to compute the tax after the determination of assessable income. Those provisions

approaches infinity. Blum and Kalven, “Uneasy Case for Progressive Taxation,” 420. Commentators have sometimes referred to such a flat tax with an exemption as a “degressive tax.” See, e.g., Byrne, “Progressive Taxation Revisited,” 744; Marjorie E. Kornhauser, “The Rhetoric of the Anti-Progressive Income Tax Movement: A Typical Male Reaction,” *Michigan Law Review* 86 (1987) 470.

⁸⁹ Kealy argues that “Neither the wording of the canon nor equity would prevent the imposition of a graduated tax, with wealthier juridic persons paying a higher proportion of their income than poorer ones.” Kealy, “Taxation,” 82; see also idem, *Diocesan Financial Support*, 335. The leading text on canon law in Great Britain and Ireland states that a bishop could also decide to use a sliding scale in proportion to revenue. Morrissey, in *Letter & Spirit*, 713. If the bishop decides to choose a progressive tax, he should consult with the finance council and the presbyteral council about the various tax rates and the thresholds for each rate. See *infra*, notes 106–114 and accompanying text.

⁹⁰ Kennedy, “Book V,” 1463.

⁹¹ A progressive tax with the money spent mostly on richer parishes would redistribute income the wrong way; in contrast, a flat tax with the money spent mostly on the poor would produce a progressive system overall. See *infra*, notes 155–156 and accompanying text.

In this regard, canon 1274, §3 sets forth the obligation of richer dioceses to help poorer ones. Kealy writes: “Bishops should bear it in mind that in the expenditure of ecclesiastical resources they must take into account the needs not only of their own dioceses but of other individual churches, since they too form part of the one Church of Christ. Let it be their care also to give help according to their resources when other dioceses or regions are afflicted by disaster.” Kealy, *Diocesan Financial Support*, 249, quoting *Christus Dominus* ¶ 6: AAS 58 (1966) 676, trans. in *Documents of Vatican II*, ed. Austin P. Flannery (Grand Rapids: Eerdmans, 1975) 567.

include different tax rates,⁹² tax credits,⁹³ or caps⁹⁴ for parishes supporting schools, owing debts over a certain amount, or satisfying other criteria. Such provisions encourage parishes to adopt certain programs or to engage in various activities in an effort to influence behavior. For example, one diocese imposes an additional one percent tax on parishes whose parishioners do not subscribe to the diocesan newspaper.⁹⁵ Although canon 1263 gives the bishop wide discretion to allow tax deductions for such expenditures, this article questions whether any credit—which would reduce the diocesan tax or assessment on a dollar-for-dollar basis—can pass muster under canon law, given that canon 1263 requires such taxes be “proportionate to [the parishes’] income.”

5. The Needs of the Diocese

To determine what “the needs of the diocese”⁹⁶ means, a bishop might turn to canon 1254, the first provision in Book V of the 1983 code on the Church’s temporal goods. That canon states that the proper purposes for the Church’s ownership of temporal goods principally include: “to order divine worship, to care for the decent support of the clergy and other

⁹² For example, several dioceses impose lower tax rates on parishes that operate and support schools. See, e.g., NDLS Survey Response Nos. 31, 66, and 67. The bishop in one diocese has exempted parishes that subsidize their own parish school from an upcoming increase in the diocesan assessment rate, effective July 1, 2003. NDLS Survey Response No. 75. Other dioceses impose various tax rates on different types of income. See, e.g., NDLS Survey Response No. 69, imposing a lower tax rate on unrestricted amounts from wills or bequests; NDLS Survey Response No. 71, subjecting bequests to a higher tax rate than other income, but exempting bequests from assessments for high schools and clergy care and wellness. Finally, several dioceses offer lower tax rates to parishes that participate in, or impose higher tax rates on parishes that fail to participate in, various diocesan programs. See, e.g., NDLS Survey Response No. 5, offering a half-percent lower rate if a parish uses the diocesan cash management program; NDLS Survey Response No. 23, imposing an additional one percent rate if thirty-five percent of parishioners do not subscribe to the diocesan newspaper.

⁹³ Several dioceses allow credits, which reduce taxes due on a dollar-for-dollar basis, for debt service payments, school expenditures, contributions to the Catholic Charities fund drive, or fixed amounts for each pastoral minister. See, e.g., NDLS Survey Response Nos. 29, 42, and 66. One of these dioceses imposes minimum effective tax rates for both parishes that support and do not support a school. NDLS Survey Response No. 42.

⁹⁴ The responses from a handful of dioceses noted that they cap the current year’s assessment based on the largest billed assessment for the last two years, to prevent the assessment from increasing or dropping by more than a certain percentage in any given year. See, e.g., NDLS Survey Response Nos. 38, 47, 52, 54, 71, and 84.

⁹⁵ NDLS Survey Response No. 23.

⁹⁶ 1983 code c. 1263.

ministers; and to exercise works of the sacred apostolate and of charity, especially toward the needy."⁹⁷ As a result, diocesan needs would include, for example, the costs of administering the diocese; funding the diocese's spiritual, pastoral, social service, and educational programs; operating a matrimonial tribunal; supporting the poor or struggling parishes, especially within the diocese; financing the Church's events and organizations on both the national and international levels; and aiding missions.⁹⁸ Diocesan needs obviously depend upon the level of services and support that the diocese either provides or aspires to provide. In that regard, the diocesan budget should indicate the needs the bishop plans to address.⁹⁹

Various texts from Vatican II and several provisions in canon law support the conclusion that a diocese's spiritual and financial obligations include the poor, whether inside the diocese or elsewhere in the world.¹⁰⁰ In particular, both *Lumen gentium* and *Christus Dominus* call bishops, dioceses, churches, and the faithful to solidarity in financial matters.¹⁰¹ *Lumen gentium* states that "bishops, in a universal fellowship of charity, should gladly extend their fraternal aid to other churches, especially to neighboring and more needy dioceses in accordance with the venerable example of antiquity."¹⁰² *Christus Dominus* reminds bishops that when "administering ecclesiastical property, [they should think] of the needs not only of their own dioceses but also of the other particular churches, for they are also a part of the one Church of Christ."¹⁰³ Implementing these instructions, canon 1271 recognizes a diocese's obligation to contribute to the support of the Apostolic See.¹⁰⁴

⁹⁷ 1983 code c. 1254, §2

⁹⁸ Kealy, *Diocesan Financial Support*, 326–327, citing Cardinal Krol's intervention in support of canon 1263 at the October 1981 plenary meeting of the Revision Commission; see also Morrissey, in *Letter & Spirit*, 712, n. 3.

⁹⁹ Frugé, "Diocesan Taxation," 81. In addition, the bishop should provide to the faithful of the diocese an accounting of the taxes collected and amounts spent.

¹⁰⁰ See generally Garrett J. Roche, "The Poor and Temporal Goods in Book V of the Code," *The Jurist* 55 (1995) 299.

¹⁰¹ Kealy, *Diocesan Financial Support*, 248–250.

¹⁰² *Lumen gentium* ¶ 23, in *The Sixteen Documents of Vatican II*, ed. Marianne Lorrane Trouvé (Boston: Pauline Books & Media, 1999) 150.

¹⁰³ *Christus Dominus* ¶ 6, in Trouvé, 274. The text continues: "Finally, they should direct their attention, according to their means, to the relief of disasters by which other dioceses and regions are affected." See also Kealy, *Diocesan Financial Support*, 249.

¹⁰⁴ 1983 code c. 1271: "By reason of the bond of unity and charity and according to the resources of their dioceses, bishops are to assist in procuring those means which the

In addition, canon 1274 sets forth the obligations of richer dioceses to support poor ones.¹⁰⁵

6. Consultation

The bishop must consult with both the diocesan finance council¹⁰⁶ and the entire presbyteral council¹⁰⁷ before imposing a tax under canon 1263.¹⁰⁸ The bishop's failure to consult with either body invalidates a tax and would presumably relieve those persons subject to the tax from the obligation to pay it.¹⁰⁹ On the other hand, if the bishop listens to the finance and presbyteral councils and takes their advice seriously, those bodies will more likely support the ultimate policy.¹¹⁰

Canon 1263 requires "consultation," not "consent." Under canon 127, a valid consultation requires the bishop: (1) to convoke both the finance council and the presbyteral council to discuss the matter; (2) to provide information necessary to reach an informed judgment from each council; (3) to seek advice from all present; and (4) to listen to the advice.¹¹¹ Kennedy suggests that the counsel sought should include the genuineness and relative importance of the diocesan need underlying the proposed tax, the appropriate meaning of the "moderate" requirement under

Apostolic See needs, according to the conditions of the times, so that it is able to offer service properly to the universal Church." See also Kealy, *Diocesan Financial Support*, 347.

¹⁰⁵ 1983 code c. 1274, §3: "Insofar as necessary, each diocese is to establish a common fund through which bishops are able to satisfy obligations towards other persons who serve the Church and meet the various needs of the diocese and through which the richer dioceses can also assist the poorer ones."

¹⁰⁶ At least one commentary describes this body as the council for economic affairs. Lopez Alarcón, in *Code of Canon Law Annotated*, 781.

¹⁰⁷ Several commentators also call this body the council of priests. Ibid. The leading commentary in the United States notes that canon 1263 requires the bishop to involve the entire presbyteral council, not just the college of consultors as in canon 1277 (ordinary and extraordinary administration by diocesan bishop) or canon 1292 (restricted alienation). Kennedy, "Book V," 1464.

¹⁰⁸ In addition, Kennedy suggests that the bishop may want to consult the diocesan pastoral council, if one exists, plus the superiors of any religious institutes of diocesan right and the representatives of any other categories of public juridic persons that the bishop contemplates taxing. Kennedy, "Book V," 1464.

¹⁰⁹ Ibid., 1463.

¹¹⁰ Frugé, "Diocesan Taxation," 81.

¹¹¹ See Kealy, "Taxation," 80, citing canon 127; see also idem, *Diocesan Financial Support*, 331.

the circumstances, the definition of the income subject to the tax, the proposed tax's rates,¹¹² its duration, and the process, if any, for appealing any determinations involving the tax.¹¹³

Finally, canon 127 stipulates that the bishop should not act contrary to the advice given unless he concludes that there is an overriding reason for so doing.¹¹⁴ This article respectfully suggests that, whenever reasonably possible in such a situation, the bishop should also articulate his overriding reason, especially given the circumstances in the early 2000s when both the laity and others are calling for more transparency in both administrative decisions and financial reporting.

B. Extraordinary Taxes

Canon 1263 allows the diocesan bishop to impose "an extraordinary and moderate exaction upon other physical and juridic persons in case of grave necessity and under the same conditions" as the so-called ordinary tax, but "without prejudice to particular laws and customs" that might give him greater rights. Ignoring the "particular laws and customs" exception for the moment, a "moderate" extraordinary tax can apply during "grave necessity," which suggests a limited duration, to "other physical and juridic persons" if the bishop also satisfies the "under the same conditions" requirement. Unfortunately, canon 1263 does not specify exactly which of the other unmentioned conditions for the so-called ordinary tax, namely the "subject to governance," "proportionate to income," and "consultation" prerequisites, fall within the "under the same conditions" requirement for the extraordinary tax. Although not expressly labeled as extraordinary taxes, the responses to the NDLS survey suggest that at least a few dioceses in the United States currently impose such exactions to fund an unfunded liability in the diocese's defined benefit plan or to pay for retirement housing for priests.¹¹⁵

¹¹² If the bishop proposes a progressive tax, the consultation should include "the various levels and percentages to be used." Kennedy, "Book V," 1463.

¹¹³ Kennedy opines that a single consultation at the time of a tax's original imposition seemingly does not satisfy the consultation requirement's intent. As a result, that text encourages the bishop to repeat consultation before renewing an annual or otherwise regularly recurring tax. *Ibid.* Such continuing consultation seems wise since the circumstances relevant to a particular tax can change.

¹¹⁴ 1983 code c. 127, §2.

¹¹⁵ See, e.g., NDLS Survey Response Nos. 8, 26, and 73.

1. Grave Necessity

Both the terms “extraordinary” and “grave necessity” suggest that a diocesan bishop may not regularly impose this exaction for recurring diocesan operations. This constraint dictates that the bishop restrict any extraordinary exactions to a limited duration. The commentators agree that canon law intended this provision for a particular need, specific purpose, or during an unusual set of circumstances.¹¹⁶ For example, the diocese may need the revenues to pay the expenses related to a papal visit, build or repair a cathedral or seminary, or, more recently, to pay legal fees or damages arising from sexual abuse cases.¹¹⁷ In addition, the grave necessity requirement indicates that the need for an extraordinary tax must qualify as particularly urgent and important. Kennedy also interprets grave necessity as requiring that the ordinary sources of income will not suffice.¹¹⁸

2. Other Physical and Juridic Persons

Unlike the ordinary tax, which only applies to “public juridic persons subject to his governance,” the bishop may also impose an extraordinary tax both on private juridic persons¹¹⁹ and on physical persons.¹²⁰ An ambiguity, certainly in the English translation, suggests that the extraordinary tax could potentially apply to persons, whether individuals or private and public juridic persons, not subject to the bishop’s governance.¹²¹ As a practical matter, the absence of a clarifying interpretation precludes

¹¹⁶ Kennedy, “Book V,” 1464; see also Myers, “Temporal Goods of the Church,” 866.

¹¹⁷ See Morrissey, in *Letter & Spirit*, 713.

¹¹⁸ Kennedy, “Book V,” 1464.

¹¹⁹ See *supra*, note 42.

¹²⁰ In contrast to the *subsidium caritativum* in canon 1505 of the 1917 code (see *supra*, note 20), canon 1263 does not restrict the extraordinary tax to those persons possessing a benefice. Myers, “Temporal Goods of the Church,” 865.

¹²¹ Kennedy, “Book V,” 1464–1465. For example, canon law grants autonomy of governance to religious institutes and apostolic societies, including institutes and societies that a pope may have created. See *supra*, note 44 and accompanying text.

Under one interpretation, the bishop could not lawfully impose an extraordinary tax on religious institutes and apostolic societies of pontifical right and their schools and hospitals because they fall outside the bishop’s governance under canon law. See Kealy, “Taxation,” 78, 90 (case 16); see also Lopez Alarcón, in *Code of Canon Law Annotated*, 781. On the other hand, canon 264, which allows the bishop to impose a tax to support a diocesan seminary, specifically authorizes a levy on juridic persons that have established a presence in the diocese in certain circumstances, even though canon law does not otherwise subject those persons to the bishop’s governance. Kennedy, “Book V,” 1464, n. 43; see also Myers, “Temporal Goods of the Church,” 865.

a bishop from levying an extraordinary tax on any person not subject to his governance because canon 14 would allow that person to treat the tax as “doubtfully valid and, hence, not binding.”¹²²

3. *Under the Same Conditions*

Canon law scholars uniformly agree that the phrase “under the same conditions” requires the bishop to consult with the finance council and the presbyteral council before imposing an extraordinary tax.¹²³ In the previous paragraph, this article briefly considered whether the “subject to governance” condition applies to extraordinary taxes. Even more relevant to this article, two commentators specifically state that an extraordinary tax must satisfy the “proportionate to income” requirement.¹²⁴ From a practical standpoint, an extraordinary tax based on wealth would again raise a “doubtfully valid” concern that would excuse payment until an authentic interpretation provides otherwise.¹²⁵ Once more, however, both income and wealth affect a person’s ability to pay any tax, especially an extraordinary exaction.¹²⁶ On this view, an authentic interpretation should construe the phrase “under the same conditions” narrowly, so as not to include the “proportionate to their income” requirement. For this reason, the next revision of the code should specifically allow diocesan taxes or assessments, especially extraordinary exactions, based on ability to pay, rather than income alone. Such an amendment would allow a more holistic approach to diocesan taxation of any parishes or other taxable persons in the “asset rich, income poor” category.

4. *Other Particular Laws and Customs*

The final clause in canon 1263 contains another ambiguity, this one involving diocesan laws and customs. The language “without prejudice to particular laws and customs attributing greater powers to him” could convey more extensive taxing power to a diocesan bishop, certainly as to

¹²² Kennedy, “Book V,” 1465.

¹²³ Kealy, “Taxation,” 84; Kennedy, “Book V,” 1464; Myers, “Temporal Goods of the Church,” 865; see also Lopez Alarcón, in *Code of Canon Law Annotated*, 781; Morrissey, in *Letter & Spirit*, 713.

¹²⁴ Kennedy, “Book V,” 1464; see also Lopez Alarcón, in *Code of Canon Law Annotated*, 781.

¹²⁵ See *supra*, note 122 and accompanying text.

¹²⁶ See *supra*, note 73 and accompanying text.

extraordinary taxes.¹²⁷ The most detailed explanation of the provision's canonical history reports that after the Revision Commission's 1981 plenary meeting, Pope John Paul II appointed a special six-member cardinalial commission to consider six canons, including canon 1263. The final version he promulgated added the above-quoted phrase at the end of the canon.¹²⁸ Kealy explains that in some regions, particularly Germany and Austria, the state collected a church tax, not in the government's own name, but as an agent for the Church. As a result, the dioceses in question had to empower the civil authorities to collect the tax. Although he does not explain how such an arrangement qualifies as an "extraordinary" tax within the meaning of canon 1263, Kealy opines that this canon does not allow new local legislation that grants broader powers to bishops, reasoning that such an interpretation would leave the restrictions in the canon meaningless.¹²⁹

III. Actual Practices in the United States

As mentioned earlier, canonists agree that canon 1263 allows a bishop to use tax rates that increase as assessable income rises. The question arises, however, as to what extent, if any, the bishops in the United States have used such progressive rates for diocesan taxes or assessments following the promulgation of the 1983 code. A survey might supply the answer. Unfortunately, the only three surveys found that addressed the question were done prior to 1983.¹³⁰ The NDLS survey mentioned earlier indicates that

¹²⁷ Interestingly, the Latin version of canon 1263 and earlier English translations used a semicolon to separate the two exactions in the provision. See *supra*, note 17. The use of a semicolon in canon 1263 enhances the possible argument that the exception for "particular laws and customs" also applies to the ordinary tax. Without explicitly using this argument, one commentator has argued that the last phrase in canon 1263 may permit particular law or custom to continue the use of the *cathedraticum*. Myers, "Temporal Goods of the Church," 866. At that time, the leading translation in the United States used a semicolon to separate the two clauses in canon 1263. See *supra*, note 17. That same commentary, however, acknowledged that "the *cathedraticum* as such was not normally part of the life of the Church in the United States." Myers, 866.

¹²⁸ Kealy, *Diocesan Financial Support*, 329–330, 338–339.

¹²⁹ Kealy, "Taxation," 85.

¹³⁰ In responding to the NDLS survey, several replies mentioned another survey that the Diocese of Great Falls-Billings in Montana recently conducted (the "Great Falls-Billings survey"). That 2001 survey documents that dioceses increasingly rely upon annual appeals. Of the ninety-six dioceses that responded to the Great Falls-Billings survey, eighty-eight, or almost 91.7 percent, obtained an average of 34.6 percent of their revenue from annual appeals. Although the survey does not specifically address the question, the data suggests that annual appeals provide the greatest source of revenue for the responding dioceses. E-mail from Joe Pipinich, Stewardship, Diocese of Great Falls-Billings, to

the bishops who impose diocesan taxes or assessments in the United States use flat rates almost four times more frequently than progressive rates. The results from the NDLS survey update and mirror the findings and conclusions in the earlier surveys.

A. *The Notre Dame Law School Survey*

The Appendix describes in considerable detail the methodology underlying the NDLS survey.¹³¹ Briefly, the survey used diocesan web sites, short e-mail requests for information, and several telephone conversations in an effort to determine whether the geographical dioceses in the fifty states and the District of Columbia used flat rates or progressive rates to compute diocesan taxes or assessments.¹³² The survey gathered data about the actual practices in eighty-five geographic dioceses in the United States. The information obtained comes from thirty-seven states and all fourteen episcopal regions.¹³³ The survey results also reveal other

Patti J. Ogden, Research Librarian, Notre Dame Law School (April 23, 2003)[on file with the author]. The Great Falls-Billings survey, however, does not address the flat versus progressive issue regarding tax rates. *Ibid.*

¹³¹ See *infra*, Appendix at 366–67.

¹³² At least six dioceses in the survey referred to amounts that the bishop required parishes to pay, not as diocesan taxes or assessments, but as a “Management Service Fee,” a “mandatory ‘target,’” a “Parish Share goal,” a “quota,” or a “taxa.” NDLS Survey Response Nos. 22, 31, 52, 53, 64, and 70.

¹³³ The USCCB divides the United States into fourteen geographic regions. United States Conference of Catholic Bishops, U.S. Catholic Dioceses by State, at <http://www.usccb.org/state.htm>, visited July 28, 2004 (hereafter “Bishops’ Website”). Listed below are the states that comprise each region and, in parenthesis, the number of dioceses within the region represented in the NDLS survey results.

- Region 1: Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut (5)
- Region 2: New York (3)
- Region 3: New Jersey, Pennsylvania (7)
- Region 4: Delaware, District of Columbia, Maryland, Virginia, West Virginia (3)
- Region 5: Alabama, Kentucky, Louisiana, Mississippi, Tennessee (7)
- Region 6: Michigan, Ohio (6)
- Region 7: Illinois, Indiana, Wisconsin (10)
- Region 8: Minnesota, North Dakota, South Dakota (6)
- Region 9: Iowa, Kansas, Missouri, Nebraska (7)
- Region 10: Arkansas, Oklahoma, Texas (7)
- Region 11: California, Hawaii, Nevada (7)
- Region 12: Idaho, Montana, Alaska, Washington, Oregon (7)
- Region 13: Utah, Arizona, New Mexico, Colorado, Wyoming (4)
- Region 14: Florida, Georgia, North Carolina, South Carolina (6)

NDLS Survey Response Nos. 1–78, 80–86.

interesting data about the widely diverse diocesan taxation practices in this country.

1. *Flat versus Progressive Rates*

Among the eighty-five dioceses providing information through one means or another, twelve dioceses stated that their bishops do not impose a diocesan tax,¹³⁴ leaving a sample of seventy-three dioceses that view themselves as imposing at least one diocesan tax or assessment.¹³⁵ Focusing only on the subset of dioceses acknowledging a diocesan tax, only fourteen dioceses¹³⁶—or less than twenty percent—reported using progressive tax rates. These fourteen dioceses come exclusively from the mid-east, south, or southwest and Regions 3, 4, 5, 10, 13, and 14.¹³⁷ Two of those fourteen dioceses, however, also use flat rates to compute other diocesan taxes or assessments.¹³⁸ Six, or almost half of the fourteen dioceses with progressive tax rates, utilize non-incremental tax brackets.¹³⁹

¹³⁴ NDLS Survey Response Nos. 1, 3, 4, 11, 22, 28, 34, 37, 54, 62, 65, and 86.

¹³⁵ Although this article accepts those responses as accurate for purposes of the analysis that follows, reasonable minds could certainly disagree with the assertion that a *mandatory* goal or target in an annual appeal does not qualify as a tax or assessment under canon 1263. See *supra*, note 18. By any standard, assessments for diocesan schools or priests' retirement programs fall under canon 1263. For a more detailed discussion about these non-taxing dioceses, see *infra*, Appendix notes 7–10 and accompanying text.

¹³⁶ NDLS Survey Response Nos. 9, 12, 16, 17, 18, 19, 39, 44, 46, 47, 50, 58, 59, and 72.

¹³⁷ See *supra*, note 133.

¹³⁸ NDLS Survey Response Nos. 18 and 44.

¹³⁹ NDLS Survey Response Nos. 39, 44, 46, 50, 58, and 59. In a non-incremental system, a fixed rate applies to all income in the respective tax bracket. For example, assume a very simple progressive and non-incremental rate structure as follows:

<u>Assessable Income</u>	<u>Applicable Rate</u>
Zero to \$100,000	10%
Over \$100,000	20%

Under this rate structure, a parish with exactly \$100,000 in assessable income would owe \$10,000 ($\$100,000 \times .10$) in diocesan tax. If the parish's income increased to \$100,001, the parish's diocesan tax would jump to \$20,000.20 ($\$100,001 \times .20$). In this example, a one dollar increase in assessable income (from \$100,000 to \$100,001) results in a \$10,000.20 jump in the parish's diocesan tax (from \$10,000 to \$20,000.20), a result that violates both vertical and horizontal equity. See *infra*, note 244. By comparison, an incremental system would apply a higher tax rate only to that income that falls within that bracket. For example, assume a very simple progressive, but incremental, rate structure as follows:

One of the remaining eight dioceses even uses a tax rate schedule in which the marginal rates begin at fifteen percent, increase to twenty-four percent, but then fall until they reach nineteen percent.¹⁴⁰ Such a structure illustrates a “humpbacked” rate system or “bubble,” in which some taxpayers pay a higher marginal tax rate than others with higher taxable incomes.¹⁴¹

If we turn next to the fifty-nine dioceses using only non-progressive rates, six seemingly violate the prohibition against per capita taxes by basing diocesan assessments, in whole or in part, on the number of parishioners, registered families, envelope holders or donors, or students from the parish.¹⁴² The remaining fifty-three dioceses in the NDLS survey—an overwhelming majority of those dioceses that consider themselves as imposing a diocesan tax—mention only “flat” rates for their diocesan taxes or assessments.¹⁴³ Although comparisons require caution, the flat tax rates in those fifty-three dioceses range from a low of one-half of one percent to a high of 26.3 percent.¹⁴⁴ Significantly, however, the

<u>Assessable Income</u>	<u>Applicable Tax</u>
Between Zero and \$100,000	10% of the amount
Over \$100,000	\$10,000, plus 20% of the amount over \$100,000

Under this rate structure, a parish with exactly \$100,000 in assessable income would owe \$10,000 ($\$100,000 \times .10$) in diocesan tax. If the parish’s income increased to \$100,001, the parish’s diocesan tax would increase to \$10,000.20 [$\$10,000 + .2(\$100,001 - \$100,000)$]. In this example, a one dollar increase in assessable income (from \$100,000 to \$100,001) results in only twenty cent increase in the parish’s diocesan tax (from \$10,000 to \$10,000.20).

¹⁴⁰ NDLS Survey Response No. 72. Such a system, seemingly unjustly, places the highest tax burden on “middle-income” parishes in the twenty-four percent bracket.

¹⁴¹ Alan Gunn and Larry D. Ward, *Cases, Text and Problems on Federal Income Taxation*, 5th ed., American Casebook Series (St. Paul: West Group, 2002) 8. Such a system typically imposes progressive *effective* tax rates, even though the *marginal* rates are regressive at higher levels of income. See *supra*, note 88. In other words, high-income taxpayers nevertheless usually pay a larger percentage of their total taxable incomes than middle-income taxpayers.

¹⁴² NDLS Survey Response Nos. 13, 21, 32, 40, 51, and 76. See *supra*, note 81 and accompanying text. One of these dioceses also imposes a flat tax on certain parishes. NDLS Survey Response No. 40. In addition, at least three other dioceses base assessments or mandatory goals in diocesan appeals on the number of registered families or contributors in each parish. See, e.g., NDLS Survey Response Nos. 1, 37, and 86.

¹⁴³ In addition, several other dioceses use flat rates for various assessments. See *supra*, note 138 and accompanying text; see also NDLS Survey Response Nos. 18, 44, and 86.

¹⁴⁴ NDLS Survey Response Nos. 67 and 72. The lower rate applies to parishes that support a school either directly or by subsidy; parishes and missions in that particular diocese

respondent from one diocese which uses a flat rate expressed an unawareness of any diocese with a progressive rate scheme.¹⁴⁵

The following chart summarizes the findings of the NDLS survey regarding the seventy-three dioceses self-reporting a diocesan tax or assessment:

Category	Number	Percentage
Exclusively Flat	53	72.6%
Any Progressive	14	19.2%
Per capita	6	8.2%
Totals	73	100.0%

Stated another way, the fifty-three dioceses that mention only flat tax rates to impose diocesan taxes and assessments outnumber the fourteen dioceses using any progressive rates for a diocesan tax or assessment by an almost four-to-one ratio.

2. Other Practices

The information obtained from the eighty-five dioceses points to several other interesting findings and conclusions. First, at least some dioceses may not have reexamined their taxing practices since Pope John Paul II promulgated the revised code in 1983. The response from one diocese begins proudly, "We have a *cathedraticum* formula that has been in place since 1976."¹⁴⁶ Second, even though the 1983 code repealed the

that do not operate schools and do not support or provide a subsidy to a regional Catholic school pay an assessment equal to one percent of regular Sunday offerings. Not knowing exactly what income individual dioceses tax seriously limits comparability of the given percentages. In particular, exclusions and deductions can exempt significant portions of total parish income from actual taxation. If the latter diocese exempted 99.9 percent of total parish income from taxation, the actual tax burden on parishes in that diocese may fall below the levy on parishes in the former diocese. At some point, however, a diocesan tax that exempts almost all income from taxation arguably ceases to be "proportionate to their income." As another illustration, if offertory collections account for eighty percent of the total parish income in a particular diocese, a flat ten percent tax rate in that diocese would collect more revenue (specifically, eight percent of total parish income) than a flat twenty percent tax rate in a system that allowed various exclusions and deductions that reduced the tax base to thirty percent of total parish income (translating to only six percent of total parish income).

¹⁴⁵ NDLS Survey Response No. 56.

¹⁴⁶ NDLS Survey Response No. 66 (*italics added*).

cathedraticum, at least nineteen dioceses continue to refer to diocesan assessments as such.¹⁴⁷ Third, at least nine dioceses violate the prohibition against per capita taxes by basing diocesan taxes or assessments, either in whole or in part, on the number of parishioners, registered families, envelope holders or donors, or students from the parish.¹⁴⁸ Fourth, when dioceses pass-through to the parishes costs arising from certain diocesan programs, they may violate canon law if the bishop does not observe the requirements of canon 1263.¹⁴⁹

Finally, the bishops in the United States continue to use a wide variety of tax practices, including divergent definitions of assessable income, assorted rates, and different credits and caps.¹⁵⁰ In fairness to the bishops exclusively using flat rates, they typically grant standard deductions,¹⁵¹ exclusions,¹⁵² other deductions,¹⁵³ credits,¹⁵⁴ or subsidies to parishes in need¹⁵⁵ in an effort to allocate equitably the costs of funding diocesan programs, supporting poorer parishes in the diocese, and assisting the

¹⁴⁷ NDLS Survey Response Nos. 2, 10, 17, 18, 19, 24, 26, 29, 30, 55, 59, 66, 68, 73, 75, 77, 82, 83, and 87; see also *supra*, notes 78–79 and accompanying text. One commentator noted similar improper characterizations prior to the 1983 code. See Myers, “Temporal Goods of the Church,” 866; see also T. Lincoln Bouscaren and Adam C. Ellis, *Canon Law: A Text and Commentary*, 3d rev. ed. (Milwaukee: Bruce Publishing Co., 1957) 787–788, observing that the term *cathedraticum* does not accurately describe the tax that American bishops levied before the 1983 code to support their dioceses. Because the 1983 code abolishes the provision that allowed a bishop to collect the *cathedraticum*, under another view the continued use of the misnomer does not matter.

¹⁴⁸ NDLS Survey Response Nos. 1, 13, 21, 32, 37, 40, 51, 76, and 86. See *supra*, note 81 and accompanying text. Three of these dioceses do not consider themselves as imposing diocesan taxes or assessments. NDLS Survey Response Nos. 1, 37, and 86; see also *supra*, note 134.

¹⁴⁹ See *supra*, note 15.

¹⁵⁰ See *supra*, notes 49–77 and 92–94 and accompanying text.

¹⁵¹ See, e.g., NDLS Survey Response Nos. 10 and 57. These standard deductions arguably translate to a progressive tax rate structure by taxing the amount of income equal to the standard deduction at a zero percent tax rate and all income above that amount at the flat tax rate.

¹⁵² See *supra*, note 74 and accompanying text.

¹⁵³ See *supra*, note 76 and accompanying text.

¹⁵⁴ See *supra*, note 93 and accompanying text.

¹⁵⁵ See, e.g., NDLS Survey Response No. 12. As a practical matter, subsidies from general diocesan funds, especially in those dioceses that use flat tax rates, often provide needed support for poorer parishes, sometimes allowing those parishes to remain in operation. In some situations, a parish might even receive more in subsidies than it pays in diocesan taxes and assessments, which would create a negative effective tax rate for the parish. Unfortunately, the existence or amounts of these subsidies may not be apparent from published diocesan financial statements or reports.

poor, the vulnerable, and the oppressed.¹⁵⁶ Other bishops attempt to consider a parish's ability to pay by reducing flat tax rates for parishes that operate or support schools¹⁵⁷ or by requiring a parish to add certain deposits or investments to determine the amount of assessable income.¹⁵⁸

B. Earlier Surveys

If the NDLS survey results are in any way surprising, they are not unique. In fact, they mirror and update the findings and conclusions of three earlier surveys that predate the 1983 code. Shortly before its promulgation, Donald J. Frugé analyzed the financial reports of thirteen dioceses¹⁵⁹ in his 1982 dissertation about the taxation practices of bishops in the United States (the "Frugé Survey").¹⁶⁰ Although incomplete information precludes any definitive conclusions about the assessments in at least two, and perhaps three, of those dioceses,¹⁶¹ the bishops in nine of the remaining ten dioceses used flat rates ranging from three to fifteen

¹⁵⁶ In fact, any serious analysis to determine whether a particular diocese uses a progressive, flat, or regressive approach to taxation must also consider the diocese's expenditures. If a diocese uses the revenues from diocesan taxes and assessments that impose progressive rates in a way that favors richer parishes, the net result may actually resemble a regressive system. In a regressive tax, the percentage of income paid falls as income increases.

¹⁵⁷ See *supra*, note 92 and accompanying text.

¹⁵⁸ See *supra*, note 77 and accompanying text.

¹⁵⁹ Based upon the public availability of financial statements, Msgr. Frugé examined one diocese from each of the thirteen regional divisions of the United States that the USCCB then used for administrative purposes. Frugé, *Taxation Practices*, 110; see also *supra*, note 133. The thirteen dioceses included: the Archdiocese of Hartford (Region 1), the Diocese of Rockville Centre in New York (Region 2), the Diocese of Pittsburgh (Region 3), the Diocese of Wheeling-Charleston (Region 4), the Diocese of Birmingham (Region 5), the Archdiocese of Cincinnati (Region 6), the Archdiocese of Chicago (Region 7), the Archdiocese of Saint-Paul and Minneapolis (Region 8), the Archdiocese of Kansas City in Kansas (Region 9), the Diocese of Galveston-Houston (Region 10), the Diocese of San Bernardino (Region 11), the Diocese of Helena (Region 12), and the Diocese of Pueblo (Region 13). Frugé, 111–129.

¹⁶⁰ Frugé, *Taxation Practices*, 110.

¹⁶¹ Although the financial statements from Hartford and San Bernardino revealed revenues from "Diocesan Assessments: Cathedralricum" and "Cathedralricum assessment on parishes," respectively, Frugé could not obtain information about the methods of computing those assessments. Frugé, *Taxation Practices*, 112, 126–127. In Pueblo, the Bishop's Diocesan Fund had previously replaced former *cathedralricum* assessments. *Ibid.*, 128–129. The bishop assigned "mandatory goals based on a percentage rate of each parish's income." *Ibid.*, 129.

percent to compute the diocesan assessment.¹⁶² In the one exception, the assessment ranged from two to 7.5 percent, depending upon the parish's income.¹⁶³

Frugé's dissertation also discussed two slightly earlier surveys.¹⁶⁴ In response to a resolution at its 1979 convention, the Board of Governors of the Canon Law Society of America authorized a survey of the financial practices of the dioceses across the United States.¹⁶⁵ Reverend Royce R. Thomas, chancellor of the Diocese of Little Rock, conducted the unpublished survey (the "CLSA Survey"), which involved a questionnaire sent to all of the 162 dioceses or archdioceses in the United States.¹⁶⁶ Among the 139 dioceses that responded, forty-seven purported to impose a "'cathedraticum' in the classical sense of the term (a moderate tax on the same amount paid by each parish once a year [under canon 1504 of the 1917 code])."¹⁶⁷ Upon closer examination,¹⁶⁸ however, the CLSA Survey concluded that only one diocese imposed "a true cathedraticum, that is a moderate tax, the same for all."¹⁶⁹ That diocese levied a \$150 tax on each diocesan entity.¹⁷⁰ The remaining forty-six dioceses, which purported to assess a *cathedraticum*, actually imposed taxes of varying amounts, based upon some percentage of income. The CLSA Survey found that some of these dioceses levied a flat percentage; other dioceses computed the tax "as a percentage in proportion to the parish's income."¹⁷¹ The percentage rates ranged from one to sixteen percent.¹⁷²

¹⁶² The dissertation reported the following flat rates: Rockville Centre (eight percent); Pittsburgh (sixteen percent, but with a planned decrease to fifteen percent); Wheeling-Charleston (three percent); Birmingham (5.5 percent); Cincinnati (4.02 percent); Chicago (5.75 percent); Saint-Paul and Minneapolis (7.5 percent); Kansas City (five percent, plus negotiated assessments for the retirement of priests and the seminary); and Helena (7.5 percent). *Ibid.*, 112–129. Although Frugé does not specify any rate for Pueblo, the use of the article "a" before the words "percentage rate" suggests a flat rate for each parish's mandatory goal for the Bishop's Diocesan Fund in that diocese, which would mean that almost ninety-one percent (ten of eleven) of the dioceses sampled used a flat rate. See *supra*, note 161.

¹⁶³ Frugé, *Taxation Practices*, 125, describing the methodology in Galveston-Houston.

¹⁶⁴ *Ibid.*, 129–133.

¹⁶⁵ *Ibid.*, 129.

¹⁶⁶ *Ibid.*, 129, n. 43.

¹⁶⁷ *Ibid.*, 130, 229.

¹⁶⁸ The survey also asked, "What is the amount due for the cathedraticum?" *Ibid.*, 229.

¹⁶⁹ *Ibid.*, 130.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

In addition, one hundred dioceses reported "a parish assessment for diocesan support, 'separate from the cathedraicum.'" ¹⁷³ These dioceses sometimes used very complicated formulas for determining the taxable bases and often allowed deductions for parishes with schools or debt. ¹⁷⁴

In 1981, the Diocese of Alexandria-Shreveport conducted an unpublished survey regarding the different methods that dioceses in the United States used to assess parishes (the "Alexandria-Shreveport Survey"). ¹⁷⁵ Frugé reports that a questionnaire was sent to eighty-six randomly selected dioceses, and seventy-six dioceses responded. ¹⁷⁶ The accompanying report concluded that thirty-six dioceses, or approximately forty-seven percent of those responding, "use[d] a single tax rate on all parishes or a single rate for parishes and another slightly lower rate for missions." ¹⁷⁷ Although thirty-two dioceses replied that they used different rates to assess parishes, ¹⁷⁸ Frugé's commentary on the survey does not address whether those different rates depended upon the amount of income, the type of income, the existence of a parish school, or other factors. The Alexandria-Shreveport survey, however, did find that eight dioceses, or thirteen percent of the respondents, used what the report termed "Variable 'Income Tax' Scales," presumably referring to progressive tax rates. ¹⁷⁹ These dioceses grouped parishes by income categories and levied a percentage tax on the parishes in each group at rates ranging from two to twenty-one percent of income. ¹⁸⁰

¹⁷³ Ibid., 130, 229. Ninety-eight dioceses also reported annual support drives in addition to parish assessments. Twenty-two dioceses indicated that the bishop assigned mandatory quotas in those appeals. Ibid., 130–131. The CLSA Survey also found other assessments or support programs. Seventy-six dioceses required parishes to contribute to the support of high schools, fifty-three dioceses imposed assessments for the diocesan newspaper, and twenty-two dioceses mandated support for other programs, including seminaries, retirement facilities for priests, campus ministry, and hospital ministry. Ibid., 131, 230.

¹⁷⁴ Ibid., 130.

¹⁷⁵ Ibid., 131–133.

¹⁷⁶ Ibid., 132.

¹⁷⁷ Ibid. The tax rates for this group ranged from five percent to eighteen percent, averaging seven percent.

¹⁷⁸ Ibid., 132. The remaining eight dioceses, accounting for ten percent of the respondents, reported that they did not impose diocesan assessments. The report apparently stated that in these dioceses "'funding was realized through an annual appeal, each parish having a *mandatory* goal assigned.'" Ibid., 133 (emphasis added).

¹⁷⁹ Ibid., 133.

¹⁸⁰ Ibid.

Collectively, the NDLS and other surveys document that the diocesan bishops in the United States primarily use flat tax rates to impose diocesan taxes and assessments.

IV. Catholic Social Teaching on Distributive Justice and the Obligation for the Well-Off to Help Support the Poor and Less Fortunate

The Roman Catholic tradition embraces the belief that the goods of creation exist to serve the needs of all.¹⁸¹ In that tradition, basic justice imposes specific obligations on everyone who enjoys greater resources.¹⁸² Catholic social teaching identifies three dimensions of basic justice,¹⁸³ namely *commutative justice*,¹⁸⁴ *distributive justice*,¹⁸⁵ and *social justice*.¹⁸⁶ Most relevant to this topic, distributive justice recognizes that human existence requires a minimum amount of material resources. Distributive justice obliges the entire human community to help fulfill the poor's basic needs unless an absolute scarcity precludes such support. Almost twenty years ago, the U.S. bishops concluded that no such scarcity exists in our country.¹⁸⁷ Earlier, in *Gaudium et spes*, Vatican II

¹⁸¹ John Paul II, encyclical *Centesimus annus* (May 2, 1991) ¶ 30: *Origins* 21 (May 16, 1991) 12–13; see also Leo XIII, encyclical *Rerum novarum* (May 15, 1891) ¶ 22, in *The Papal Encyclicals 1878-1903*, ed. Claudia Carlen (Ann Arbor: Pierian Press, 1990) 246–247.

¹⁸² NCCB, “Economic Justice for All” ¶ 74, 420.

¹⁸³ *Ibid.* ¶ 68, 419.

¹⁸⁴ In their 1986 pastoral letter on the U.S. economy, the U.S. bishops wrote: “*Commutative justice* calls for fundamental fairness in all agreements and exchanges between individuals or private social groups.” *Ibid.* See, e.g., Jon P. Gunnemann, “Capitalism and Commutative Justice,” *Annual of the Society of Christian Ethics*, ed. Alan B. Anderson et al. (Washington: Georgetown University Press, 1985).

¹⁸⁵ Distributive justice requires the Church, including its agencies and institutions, and the faithful, to evaluate the allocation of income, wealth, and power in society, especially relative to persons whose basic material needs remain unmet. NCCB, “Economic Justice for All” ¶ 70, 419.

¹⁸⁶ Social justice compels believers to recognize both their obligation to participate actively in the life of society and society's duty to enable them to do so. Scholars often refer to social justice as *contributive justice* because the concept stresses the duty of everyone who can do so to help create the goods, services, and spiritual values necessary for the whole community's welfare. *Ibid.* ¶ 71. In their recent statement on taxation issues in Catholic social thought, the Iowa bishops identified contributive justice as one of the two basic moral principles, along with distributive justice, that should govern the tax system in the State of Iowa. Contributive justice dictates that all citizens should pay taxes willingly so that the government can provide for the common good. Iowa Catholic Bishops, “Taxation Issues in Catholic Social Thought,” *Origins* 33 (December 4, 2003) 441, 443.

¹⁸⁷ NCCB, “Economic Justice for All” ¶ 70.

reiterated the longstanding church teaching that the gospel requires us "to come to the relief of the poor and to do so not merely out of [our] superfluous goods."¹⁸⁸ Later in that same document, the council called upon the entire people of God, under the bishops' guidance and example, to respond to this obligation "as was the ancient custom in the Church, out of the substance of their goods and not only out of what is superfluous."¹⁸⁹ In essence, social justice requires believers and the Church to act for the common good.¹⁹⁰

In the Roman Catholic tradition, the collective wisdom of the Old and New Testaments, papal encyclicals and universal Church documents, and the teachings of the U.S. bishops on the economy challenge diocesan bishops in this country, their advisors, and the faithful to reexamine existing practices regarding diocesan taxes and assessments under canon law. All of these authorities stress distributive justice as well as the need for the well-off to help support those less fortunate.¹⁹¹

A. Scripture

Beginning in the Old Testament, the Bible consistently recognizes the need for the faithful to tithe or to offer first fruits¹⁹² to express their

¹⁸⁸ *Gaudium et spes* ¶ 69, in *Sixteen Documents of Vatican II*, 695; see also NCCB, "Economic Justice for All" ¶ 68, 419.

¹⁸⁹ *Gaudium et spes* ¶ 88.

¹⁹⁰ NCCB, "Economic Justice for All" ¶ 71, 420; see also *supra*, note 186.

¹⁹¹ While the technical nature of many tax policy debates certainly offers an explanation, modern moral philosophers and religious ethicists somewhat surprisingly have not given tax policy much attention. John Davis Feldmann, "Ethics and Taxes: An Ethical Analysis of Anglo-American Tax Theory" (Ph.D. diss., University of Virginia, 1986) 4–7 [on file with author]. Feldmann calls for ethicists again to focus on ethical considerations in tax policy. Within the Roman Catholic tradition, the work of Charles E. Curran stands as a notable exception. See, e.g., Charles E. Curran, "Just Taxation in the Roman Catholic Tradition," *Journal of Religious Ethics* 13 (1985) 113; see also Feldmann, 22–32, who discusses other examples. In fact, a leading bibliography on Catholic thought lists only four entries under the heading "Taxation." The Catholic University of America School of Law, *The Catholic Dimensions of Legal Study: The Catholic University Law School Annotated Bibliography* (2002, visited July 28, 2004) 113, available from <http://www.law.cua.edu/bibliography/catholic.pdf>.

¹⁹² Although often mentioned in connection with tithes, first fruits convey the concepts of priority in time and influence on the whole. By offering the first fruits to God in thanksgiving, the contributor also sought to sanctify the entire harvest. See Kealy, *Diocesan Financial Support*, 12–13. Some biblical references seem to equate the first fruits with tithing. See, e.g., Dt. 12:6, 11, 17, 14:23. Unless otherwise indicated, all biblical references rely upon the New American Bible. The New Testament epistles, however, generally transform the term "first fruits" to refer to redemption rather than to financial support.

adoration and thanks to God, to support the priests, to provide resources to build and maintain places of worship, and to assist the poor and vulnerable.¹⁹³ Rather remarkably, the Old Testament describes three separate tithes:¹⁹⁴ the first for liturgical and priestly purposes,¹⁹⁵ the second for social or convivial celebrations,¹⁹⁶ and the third—collected every third year—at least in part to help support the poor.¹⁹⁷ In addition, various passages in the Old Testament direct farmers to leave part of the harvest behind for the poor, including widows, orphans, and aliens.¹⁹⁸ Other passages command sowers to let their land lie fallow every seventh year so that the poor in the community can eat whatever grows that year.¹⁹⁹

In that context, the term applies first to Christ and then, by analogy, to the earliest converts, to virgins, and to other believers, who sanctify humanity and assure redemption for those believers who follow them. See Kealy, 22–23, who cites Col. 1:15 which describes Christ as the “firstborn of all creation,” 1 Cor. 15:20–23, Jas. 1:18, Rv. 14:4.

¹⁹³ See, e.g., Gn. 14:20, where after Melchizedek, the king of Salem and a priest of God Most High, brought out bread and wine and blessed Abram, the latter gave Melchizedek one-tenth of his possessions; Gn. 28:22, when after Jacob dreamed at Bethel about a ladder to heaven, he responded to God’s plan to give him and his descendants the land on which he slept by vowing: “Of everything you give me, I will faithfully return a tenth part to you;” Lv. 27:30, 32, requiring tithes from the grain of the field, the fruit from the tree, and the herd and flock. See also Kealy, *Diocesan Financial Support*, 6–12.

¹⁹⁴ See Tb. 1:6–8; see generally Lee J. Seidler, “What Do Steve Forbes and Moses Have in Common?,” *Tax Notes Today* (October 28, 1996) 210–61, ¶ 32. Seidler computes a “heavenly approved flat tax rate totaling about 27 percent, not including two per capita or per family taxes.”

¹⁹⁵ See, e.g., Nm. 18:21: “To the Levites, however, I hereby assign all tithes in Israel as their heritage in recompense for the service they perform in the meeting tent;” Dt. 18:1–5, assigning all sacrifices and first fruits given to God to the levitical priests; Tb. 1:6–7, referring to “the first fruits of the field and the firstlings on the flock, together with a tenth of my income and the first shearings of the sheep”). In turn, the Old Testament directed the Levites to tithe. See, e.g., Nm. 18:26, referring to “a tithe of the tithes.”

¹⁹⁶ See, e.g., Dt. 14:22–26: after the Israelites gave a first tithe to the priests at the altar, they either brought a second tithe on what remained to Jerusalem, where they partially consumed the grain, wine, and oil in religious celebration or they sold the tithe and took the money to Jerusalem, where they purchased oxen, sheep, wine, strong drink, or whatever else they desired and consumed it; Tb. 1:7, describing a second tithe in money that Tobit would take to Jerusalem each year, except for sabbatical years; Dt. 12:6, 11, 17, describing the need to take various offerings to Jerusalem and to rejoice in God’s presence; see also Kealy, *Diocesan Financial Support*, 9–10.

¹⁹⁷ Dt. 14:28–29. This enabled the Levite priests, widows, orphans, and resident aliens to eat.

¹⁹⁸ Lv. 19:9–10, instructing harvesters not to reap to the edges of their fields and vineyard owners not to strip the vines bare or to gather the fallen grapes; see also Dt. 24:19–21, offering similar instructions to olive growers to benefit the widow, the orphan, and the alien.

¹⁹⁹ Ex. 23:10–11.

Although references to tithes imply flat taxes, the Old Testament also contains references to head taxes,²⁰⁰ other regressive taxes,²⁰¹ and even mentions a progressive system based upon ability to pay.²⁰² As a result, the Old Testament consistently expresses the need for the faithful not only to support the community's liturgical efforts, but also to aid the less fortunate.²⁰³

The New Testament reaffirms and expands the Old Testament's teachings about sacrificial offerings, especially the need to support the poor.²⁰⁴ In Luke's gospel, John the Baptist challenged the crowds who came to him for baptism to share their food and clothes with those in need.²⁰⁵ During the Sermon on the Mount, Jesus taught the crowd that he had come to fulfill the law and the prophets, not to abolish them.²⁰⁶ Jesus, however, calls for "a new attitude of sacrificial discipleship" that surpasses any tithing formula.²⁰⁷ The story of the widow's mite perhaps highlights sacrificial giving at its best. After watching many rich people

²⁰⁰ See, e.g., Ex. 30:11–16, imposing a "half-shekel" offering on every individual at least twenty years old as "forfeit money from the Israelites" for the service of the tent of the meeting and specifically stating that "the rich need not give more, nor shall the poor give less." Because such a "head tax" levies a fixed amount on each person, such taxes impose a relatively greater burden on the poor. In that sense, commentators generally consider head taxes as "regressive" because they take a greater percentage of income from the poor than from the rich.

²⁰¹ The temple fees in the story of Jesus's presentation in the temple, namely a pair of turtledoves or two young pigeons, also illustrate a regressive tax under Old Testament law. Lk. 2:22–24. Because Mary and Joseph were poor, Jewish law allowed them to offer two birds rather than a sheep and either a pigeon or a turtledove. See Lv. 12:6–8.

²⁰² See, e.g., Dt. 16:17: "Each of you with as much as he can give in proportion to the blessings which the Lord, your God, has bestowed on you [shall appear before the Lord]."

²⁰³ See generally Susan Pace Hamill, "An Argument for Tax Reform Based on Judeo-Christian Ethics," *Alabama Law Review* 54 (2002) 54–59.

²⁰⁴ NCCB, "Economic Justice for All" ¶ 16, 411; see also Hamill, "Argument for Tax Reform," 61–63.

²⁰⁵ Lk. 3:11. In response to the crowds that asked what they should then do, Jesus replied: "Whoever has two cloaks should share with the person who has none. And whoever has food should do likewise." Based upon such teachings, the Letter of James criticized "you rich" for hoarding wealth. Jas. 5:1–6; see also Hamill, "Argument for Tax Reform," 64, n. 226. Hamill explains that these same individuals also failed to pay wages to laborers.

²⁰⁶ Mt. 5:17. Jesus said: "Do not think that I have come to abolish the law or the prophets; I have come not to abolish but to fulfill." Luke's gospel reiterates this message: "It is easier for heaven and earth to pass away than for the smallest part of a letter of the law to become invalid." Lk. 16:17.

²⁰⁷ Kealy, *Diocesan Financial Support*, 16–17.

put large sums into the temple treasury, while a widow deposited only two small copper coins, Jesus remarked:

This poor widow put in more than all the other contributors to the treasury. For they have all contributed from their surplus wealth, but she, from her poverty, has contributed all she had, her whole livelihood.²⁰⁸

Jesus also called upon his followers to assist the vulnerable and taught that sacrificial giving helps us identify with the poor.²⁰⁹ Jesus not only reaffirmed the Old Testament's teachings about the poor and vulnerable, but he amplified them by identifying the two greatest commandments as: (1) "You shall love the Lord, your God, with all your heart, and with all your soul, and with all your mind," and (2) "You shall love your neighbor as yourself."²¹⁰ Jesus also taught that our treatment of the needy will determine whether we will enjoy eternal life or suffer eternal punishment.²¹¹ The parable about the rich man and a poor man named Lazarus also warns the rich that they must help the poor.²¹² In that parable, while being tormented in Hades for his indifference to Lazarus, the rich man begs Abraham to send Lazarus to warn the rich man's five brothers to repent. Abraham replies: "If they will not listen to Moses and the prophets, neither will they be persuaded if someone should rise from the dead,"²¹³ indicating that the Mosaic law and the prophets provided ample guidance to the rich man as to how he should have treated the poor during his life on earth.²¹⁴ Similarly, Jesus placed very costly demands on the rich young man who stated that he kept all the commandments, but wanted to know what he must do to gain eternal life.²¹⁵ Jesus responded: "If you wish to be perfect, go, sell what you have and give to [the] poor, and you will have treasure in heaven. Then come, follow me."²¹⁶

²⁰⁸ Mk. 12:41–44; see also Lk. 21:1–4: "she from her poverty has offered her whole livelihood."

²⁰⁹ See generally Kealy, *Diocesan Financial Support*, 16–17; Hamill, "Argument for Tax Reform," 61–66.

²¹⁰ Mt. 22:36–40; see also Mk. 12:28–31.

²¹¹ Mt. 25:31–46. In particular, when referring to those "on his right" who gave food to the hungry, drink to the thirsty, welcome to strangers, clothing to the naked, care to the sick or attention to those in prison and who will inherit the kingdom, Jesus states: "Whatever you did for one of these least brothers of mine, you did for me." Mt. 25:40.

²¹² Lk. 16:19–31.

²¹³ Lk. 16:31.

²¹⁴ See Hamill, "Argument for Tax Reform," 62, n. 219.

²¹⁵ Mt. 19:16–22; see also Lk. 18:18–25.

²¹⁶ Mt. 19:21. The story ends with the young man departing in sadness because he had many possessions. Mt. 19:22; see also Lk. 18:18–30 and Mk. 10:17–31, containing

Jesus and his disciples practiced what he preached. John's gospel reports that they kept a common purse out of which the group met their own needs and gave amounts to the poor.²¹⁷

In the Acts of the Apostles, St. Luke describes the practices that the early Christian community used to support the Church and the poor within the community:

The community of believers was of one heart and mind, and no one claimed that any possession was his own, but they had everything in common. . . . There was no needy person among them, for those who owned property or houses would sell them, bring the proceeds of the sale, and put them at the feet of the apostles, and they were distributed to each according to need.²¹⁸

Accordingly, a community that follows Christ's teachings should not guard its money and financial resources from the needs of the poor or another community in the body of Christ. In his first letter to the Corinthians, St. Paul describes how one body of believers might assist another group.²¹⁹ At that time, the early Christians in Jerusalem faced significant poverty, plus persecution from both the Romans and the Jews. Reiterating the directions St. Paul gave to the churches in Galatia,²²⁰ he also describes a discipline of giving to "the collection for the holy ones"²²¹ as follows: "On the first day of the week each of you should set aside and save whatever he can afford, so that collections will not be going on when I come. And when I arrive, I shall send those whom you have

parallel passages. Similarly, Jesus warns the rich to avoid the temptation to put their focus on and loyalty in earthly possessions rather than in God. Mt. 6:24: "No one can serve two masters. He will either hate one and love the other, or be devoted to one and despise the other. You cannot serve God and mammon." See also Lk. 16:13.

²¹⁷ Jn. 12:6, 13:29.

²¹⁸ Acts 4:32–37 (the last two verses describe how Barnabas sold a field that belonged to him and laid the money at the apostles' feet). See also Acts 2:44–45: "All who believed were together and had all things in common; they would sell their property and possessions and divide them among all according to each one's need." In the first letter to the Corinthians, St. Paul also expressly mentions that such collections should support the sacred ministers. 1 Cor. 9:13–14: "The Lord ordered that those who preach the gospel should live by the gospel;" see also 1 Tm. 5:17–18, suggesting double compensation for those elders, especially those who preach and teach.

²¹⁹ 1 Cor. 16:1–4.

²²⁰ See Gal. 2:9–10, describing how James, Cephas, and John—the acknowledged leaders of the Church in Jerusalem—asked only that Paul and Barnabas "remember the poor" in their ministry to the Gentiles.

²²¹ 1 Cor. 16:1.

approved with letters of recommendation to take your gracious gift to Jerusalem.”²²² In his second letter to the Corinthians, Paul also urges the faithful to follow the example of the churches of Macedonia,²²³ who voluntarily gave “according to their means, [and] beyond their means, spontaneously, and begged us insistently for the favor of taking part in the service to the holy ones.”²²⁴ The earliest Christian communities showed great concern for their sister churches and took up collections for believers in need living in other communities.²²⁵

B. Papal and Other Universal Church Documents

Based upon these Scripture passages, especially those from the New Testament, Catholic social teaching has long recognized an obligation to support the Church and its efforts to assist the dependent and less fortunate. In the late nineteenth century, *Rerum novarum* marked the Church’s first comprehensive effort to recognize social justice as an integral part of its mission in the modern world. When questions arise about protecting the rights of individuals, this encyclical concluded that the poor and the helpless merit special consideration. Accordingly, this teaching first adumbrated the so-called “preferential option for the poor.”²²⁶ While only briefly referring to public taxes, Pope Leo XIII observed that a political state prospers and thrives through, among other things, “the moderat[e] and fair imposing of public taxes.”²²⁷ When discussing the fundamental right to possess private property, the encyclical also cautioned against

²²² 1 Cor. 16:2–3; see also 2 Cor. 8:9, 12–15: “For you know the gracious act of our Lord Jesus Christ, that for your sake he became poor although he was rich, so that by his poverty you might become rich. . . . As a matter of equality your surplus at the present time should supply their needs, so that their surplus may also supply your needs, so that there may be equality;” Gal. 2:10, sharing the instruction to “be mindful of the poor.”

²²³ 2 Cor. 8:1–14.

²²⁴ 2 Cor. 8:3–4; see also Rom. 15:26–27; Heb. 13:16.

²²⁵ Acts 11:27–30; Rom. 15:26–27; see also Kealy, *Diocesan Financial Support*, 24–25.

²²⁶ *Rerum novarum* ¶ 37: “Still, when there is question of defending the rights of individuals, the poor and badly off have a claim to especial consideration.” In *Sollicitudo rei socialis*, Pope John Paul II specifically refers to “the option or love of preference for the poor,” which he describes as “a special form of primacy in the exercise of Christian charity, to which the whole tradition of the Church bears witness.” John Paul II, encyclical *Sollicitudo rei socialis* (December 30, 1987) ¶ 42: *Origins* 17 (March 3, 1988) 656. He does not use the phrase “the so-called ‘preferential option for the poor’” in an encyclical until 1991. *Centesimus annus* ¶ 11. See generally Charles E. Curran, *Catholic Social Teaching 1891–Present: A Historical, Theological, and Ethical Analysis* (Washington: Georgetown University Press, 2002) 183.

²²⁷ *Rerum novarum* ¶ 32.

"excessive taxation" and the dangers that can arise if the state "deprive[s] the private owner of more than is fair."²²⁸

More recently in 1961 in *Mater et magistra*, Pope John XXIII wrote that "in a system of taxation based on justice and equity it is fundamental that the burdens be proportioned to the capacity of the people contributing."²²⁹ Although that specific statement addressed economic policies needed to maintain an appropriate balance between agriculture and industry in the modern economy, the encyclical also observed that the Church "relies not merely upon her teaching to hold aloft the torch of charity, but also upon her own widespread example."²³⁰ Accordingly, the principles underlying that encyclical regarding taxation apply equally to the Church's internal affairs. In *Justice in the World*, the World Synod of Catholic Bishops articulated the challenge: "While the Church is bound to give witness to justice, she recognizes that anyone who ventures to speak to people about justice must first be just in their eyes. Hence, we must undertake an examination of the modes of acting . . . found within the Church herself."²³¹

These texts from Vatican II and implementing provisions in canon law recognize the Church's obligation to support the poor throughout the world, whether inside the diocese or elsewhere.²³² Not surprisingly, Pope John Paul II has recognized social justice as an integral part of the Church's mission in the modern world. In *Centesimus annus*, he describes the duty of charity as "the duty to give from one's 'abundance' and sometimes even out of one's needs in order to provide what is essential for the life of a poor person."²³³ As noted earlier, he used the phrase "the so-called 'preferential option for the poor'" for the first time in a papal encyclical.²³⁴

C. Teachings of the Bishops in the United States

In their 1986 pastoral letter on the U.S. economy, the U.S. bishops described the Church as "a visible social institution functioning in this

²²⁸ Ibid. ¶ 47.

²²⁹ *Mater et magistra* ¶ 132.

²³⁰ Ibid. ¶ 6.

²³¹ World Synod of Catholic Bishops, *Justice in the World* (December 31, 1971) ¶ 40, available from <http://www.osjspm.org/cst/jw.htm>; see also NCCB, "Economic Justice for All" ¶ 68, 419.

²³² See *supra*, notes 96–105 and accompanying text.

²³³ *Centesimus annus* ¶ 36.

²³⁴ See *supra*, note 226.

world.”²³⁵ In that same document, when discussing the Church as an economic actor, the bishops stressed their belief and teaching that “all the moral principles that govern the just operation of any economic endeavor apply to the [C]hurch and its agencies and institutions” and articulated the need for the Church to model “exemplary” behavior.²³⁶

Earlier in this letter, the bishops referred to “a system of taxation based on assessment according to ability to pay” as a “prime necessity for the fulfillment of [the social obligations to meet the converging demands of the three forms of basic justice—commutative justice, distributive justice, and social justice].”²³⁷ The pastoral letter also explicitly recognized that tax policies create incentives that influence behavior and can encourage businesses and individuals to act responsibly and to seek the common good.²³⁸ As an implicit corollary, tax policies can also produce dysfunctional behaviors or negative outcomes.

As an overall framework to fight poverty in the United States, the bishops’ letter proposed seven elements necessary for an effective national strategy.²³⁹ One element calls upon the United States to use three principles to evaluate the public tax system in this country and its effect on the poor.²⁴⁰ First, the tax system should raise adequate revenues to pay for society’s needs, especially our obligation to meet the poor’s basic needs. Second, it should use a progressive structure so that those taxpayers enjoying relatively greater financial resources pay a higher tax rate. The bishops explicitly commented that such a structure would reduce the “severe inequalities of income and wealth” in the United States.²⁴¹ Third, the system should not require families below the official poverty line to pay income taxes.²⁴² Such an exemption illustrates a “preferential option

²³⁵ NCCB, “Economic Justice for All” ¶ 339, 445.

²³⁶ *Ibid.* ¶ 347, 446.

²³⁷ *Ibid.* ¶¶ 76, 73, 68, 419, 420.

²³⁸ *Ibid.* ¶¶ 117, 118, 424.

²³⁹ *Ibid.* ¶¶ 195–214, 431–432.

²⁴⁰ *Ibid.* ¶ 202, 431.

²⁴¹ *Ibid.* Earlier, the pastoral letter observed that “Catholic social teaching does not maintain that a flat, arithmetical equality of income and wealth is a demand of justice, but it does challenge economic arrangements that leave large numbers of people impoverished.” *Ibid.* ¶ 74, 420; see also Iowa Catholic Bishops, “Taxation Issues in Catholic Social Thought,” 443, suggesting that state spending in Iowa should first ensure the poor and vulnerable’s basic needs before undertaking other appropriations and expressing a preference for a more progressive form of taxation under Catholic social teaching.

²⁴² NCCB, “Economic Justice for All” ¶ 202, 431. By definition, those families already lack sufficient resources to purchase life’s basic necessities, and the tax system should not force them also to pay income taxes. In a footnote, the U.S. bishops praised the then-recent

for the poor.”²⁴³ In addition, the bishops recognized the need both to raise adequate revenues and to allocate equitably the burdens arising from the tax.²⁴⁴

Subsequently, on the tenth anniversary of the bishops’ letter, the bishops sought “to encourage lively dialogue and principled action on a wide variety of issues and concerns, including . . . [h]ow can the church practice in its own life and institutions what it preaches to others about economic justice”²⁴⁵

V. Conclusion and Recommendations

Using the bishops’ teachings about national tax policy as a general guide,²⁴⁶ any diocesan taxes and assessments under canon law should: (1) raise adequate revenues to fund the diocese’s needs, including the obligation to assist the poor in the diocese, poorer parishes in the diocese, and other dioceses and to support the Apostolic See; (2) use progressive rates so that those parishes and other taxable entities enjoying relatively greater financial resources pay a higher tax rate; (3) exempt poorer parishes from the tax (or at least subject them to lower tax rates than

Tax Reform Act of 1986 for removing virtually all families below the official poverty line from the federal income tax rolls. *Ibid.* ¶ 202, 451, n. 60.

²⁴³ *Ibid.* ¶¶ 16, 85–91, 202, 411, 421–422, 451, n. 60. The bishops’ letter actually used the term “fundamental ‘option for the poor.’”

²⁴⁴ Bishops can use two traditional tax policy tools—vertical equity and horizontal equity—to determine whether a tax equitably allocates the burdens. Vertical equity, which focuses on a taxpayer’s ability to pay the tax, attempts to apportion the tax burden fairly among taxpayers in different economic positions in terms of income and wealth. By comparison, horizontal equity recognizes that taxpayers in similar circumstances should bear a similar tax burden. Hamill, “Argument for Tax Reform,” 7.

²⁴⁵ NCCB, “Decade After ‘Economic Justice for All,’” 392.

²⁴⁶ Because the universal Church has directed its social teaching about tax policy primarily to taxation by secular and often democratic nation states, canon law need not necessarily employ the same systems of taxation to accomplish the goals of “justice and equity” within the Church. See *supra*, note 229 and accompanying text. Viewing a parish as a stable community within the diocese, see *supra*, note 31 and accompanying text, for example, challenges some of the parallels between the civil tax system and diocesan tax systems. Although no “poverty line” exists for parishes, a parish nevertheless needs adequate financial resources on a longer-term basis to survive as a stable community. Stable parishes simply cannot endure persistent deficits without facing fundamental change, such as closure or consolidation. As a unit of a broader diocese, bankruptcy does not offer potential relief to a particular parish. At the same time, shared faith values, perhaps including different assumptions about human behavior and appropriate administrative responses, might suggest alternative approaches within the diocesan setting. This article, however, does not attempt to develop or evaluate such possibilities.

richer parishes); (4) influence desirable behavior; and (5) seek to ease administrative burdens and operate as efficiently as reasonably possible.

In particular, this article has attempted to demonstrate that the sources urging the bishops in the United States to use progressive rates whenever they impose taxes under canon 1263²⁴⁷ include Scripture, Catholic social teaching, and the general policies supporting progressive taxes.²⁴⁸ In essence, progressive tax rates comport more closely with the messages

²⁴⁷ Assuming that diocesan revenues remain the same in any conversion to a system that uses progressive tax rates, the diocesan bishop must not cut diocesan support to poorer parishes and the needy. If the bishop reduces such expenditures or support, the net result may actually create a more regressive system than existed previously. See *supra*, note 156.

²⁴⁸ Very simply, proponents of progressive taxes generally point to their redistributive effects, which leave after-tax incomes more nearly equal than before-tax incomes; the declining marginal utility of money, which posits that the first dollars of income typically purchase necessities while, at least in the case of high-income persons, the last dollars of income buy luxuries, which the high-income taxpayers could forego without much pain; and the notion that ability to pay should influence tax liability. In response, critics complain that the higher marginal tax rates present in progressive taxes discourage work effort, promote misallocation of capital, and increase tax-sheltering or tax evasion. See generally Gunn and Ward, *Federal Income Taxation*, 10–13.

In 1952, two law professors at the University of Chicago Law School started the modern public policy debate about the wisdom of progressive taxes. Blum and Kalven, "Uneasy Case for Progressive Taxation;" see also Walter J. Blum and Harry Kalven, Jr., *The Uneasy Case for Progressive Taxation* (Chicago: University of Chicago Press, 1953). After their article, numerous books and literally hundreds of articles have addressed the "flat" versus "progressive" issue from a public policy standpoint, including several articles that specifically address philosophical, ethical, or moral dimensions in the debate. See, e.g., Robert E. Hall and Alvin Rabushka, *The Flat Tax*, 2d ed. (Stanford: Hoover Institution Press, 1995), proposing a uniform nineteen percent tax rate, after authorizing a family of four to deduct the first \$25,500 from income as a "personal allowance;" Charles O. Galvin and Boris I. Bittker, *The Income Tax: How Progressive Should It Be?* (Washington: American Enterprise Institute, 1969), presenting a "rational debate" in which Dean Galvin proposes a comprehensive tax base and a flat tax rate while Professor Bittker argues in support of progressive taxation; Bankman and Griffith, "Social Welfare," criticizing traditional legal analysis for not using a theory of distributive justice—albeit not referring to Catholic social teaching—to evaluate progressive taxation, or any other rate structures, and using modern political theory and economics to reach the conclusion that a combination of cash payments and constant, or even declining, marginal rates offers the best way to implement an optimal progressive tax; Byrne, "Progressive Taxation Revisited," 771–786, describing three philosophical approaches to the issues of fairness that give progressive taxation its instinctive appeal; Kornhauser, "Rhetoric," 518–523, concluding that both a feminist view of humanity and neoconservative philosophy support progressive taxation; Martin J. McMahon, Jr. and Alice G. Abreu, "Winner-Take-All Markets: Easing the Case for Progressive Taxation," *Florida Tax Review* 4 (1998) 65–71, discussing the equities of progressive taxation.

that the gospel, the universal Church, and the bishops themselves convey. Although flat taxes enjoy biblical roots, even the Old Testament contains references to taxes based on the ability to pay.²⁴⁹ While flat tax rates offer simplicity²⁵⁰ and existing diocesan programs to support “parishes in need” may redistribute parish resources as much as a progressive tax system would, diocesan bishops can rather easily adopt progressive rates with little, if any, loss in overall revenue to the diocese.²⁵¹ Even if a

²⁴⁹ See *supra*, note 202 and accompanying text.

²⁵⁰ Given the skeletal administrative staff in many dioceses and parishes, a flat tax based only on easily enumerated revenues, particularly when the bishop uses “parish in need” programs and other mechanisms in an effort to accomplish both intra- and inter-diocesan economic justice, offers considerable appeal. For example, in some circumstances a simple flat tax on parishes, say five percent of offertory collections, might provide a more equitable and just system than a more complex progressive tax system that yields the same dollars. Tax systems that combine simplicity and low tax rates ease administrative burdens on both the collector and the payors and reduce incentives to manipulate or defraud the system. As a practical matter, dioceses generally must rely on cooperation and self-policing to obtain compliance and may find it difficult to hold parishes that cheat on their taxes accountable. Moreover, in a flat tax system, all parishes can feel they are being treated equally, and no one can question why various tax brackets were set at the applicable amounts. We should recognize, however, that by prohibiting per capita taxes, canon law has rejected—at least implicitly—simplicity as the paramount objective. See *supra*, note 81 and accompanying text.

Alternatively, the concept of prominence—the tendency of individuals seeking to solve a problem in concert with others to settle on the most prominent, or conspicuous, solution—may explain the predominate use of flat diocesan taxes and assessments in the United States. Faced with the need to select a tax structure, a bishop and his advisors might recommend a flat rate tax system simply because no other rate structure comes immediately to mind. Cf. Bankman and Griffith, “Social Welfare,” 1914, discussing the federal income tax.

²⁵¹ For example, assume that a particular diocese includes only the following five parishes with the listed characteristics:

<u>Name of parish</u>	<u>Assessable income</u>	<u>Number of families</u>
All Saints	\$80,000	500
Blessed Sacrament	100,000	300
Christ the King	600,000	1,200
Divine Word	900,000	1,000
Eternal Light	<u>1,500,000</u>	<u>2,500</u>
Totals	<u>\$3,180,000</u>	<u>5,500</u>

Further assume that the diocese imposes a flat ten percent tax on assessable income. As a result, the diocesan tax raises \$318,000 to support diocesan needs as follows:

<u>Name of parish</u>	<u>Flat tax</u>	<u>Computations</u>
All Saints	\$8,000	\$80,000 × .10
Blessed Sacrament	10,000	\$100,000 × .10

diocese has adopted a “parish in need” program to assist poorer parishes, *appearances of progressivity* remain critical. Catholic social teaching provokes the bishops and the faithful in the United States to work towards diocesan tax practices that both in fact and in appearance advance distributive justice by either exempting poorer parishes from diocesan taxes or assessments,²⁵² or subjecting those parishes to lower tax rates

Christ the King	60,000	$\$600,000 \times .10$
Divine Word	90,000	$\$900,000 \times .10$
Eternal Light	<u>150,000</u>	$\$1,500,000 \times .10$
Total	<u><u>\$318,000</u></u>	

Imagine that the bishop decides to propose a new system that allows a \$200 per family exclusion and the following simple, but incremental, progressive rate structure:

<u>Assessable Income Minus Exclusion</u>	<u>Applicable Tax</u>
Between Zero and \$300,000	10% of the amount
Over \$300,000	\$30,000, plus 20% of the amount over \$300,000

The proposed tax structure would generate \$326,000 in income for the diocese as follows:

<u>Name of parish</u>	<u>Progressive tax</u>	<u>Computations</u>
All Saints	\$-0-	\$80,000 – (500 families x \$200 per family, or \$100,000) = \$0 taxable income, which means no tax.
Blessed Sacrament	4,000	\$100,000 – (300 families x \$200 per family, or \$60,000) = \$40,000 taxable income, taxed at ten percent.
Christ the King	42,000	\$600,000 – (1,200 families x \$200 per family, or \$240,000) = \$360,000 taxable income. The tax equals \$30,000 + (.20 x \$60,000).
Divine Word	110,000	\$900,000 – (1,000 families x \$200 per family, or \$200,000) = \$700,000 taxable income. The tax equals \$30,000 + (.20 x \$400,000).
Eternal Light	170,000	\$1,500,000 – (2,500 families x \$200 per family, or \$500,000) = \$1,000,000 taxable income. The tax equals \$30,000 + (.20 x \$700,000).
Total	<u><u>\$326,000</u></u>	

Under the proposed tax structure, three parishes, namely All Saints, Blessed Sacrament, and Christ the King, would see their diocesan tax bills drop. The diocesan assessments at Divine Word and Eternal Light, however, would increase by \$20,000 at each parish, which translates to \$20 and \$8 per family, respectively, at those parishes.

²⁵² To symbolize participation in the diocese and the broader Church, the bishop might ask those parishes that do not share their “treasure” with the diocese to contribute their

than more affluent parishes. To facilitate this process, the USCCB should consider undertaking a project that would draft one or more "model" progressive diocesan tax systems for diocesan bishops to bring back to their dioceses for consultation and possible implementation.²⁵³ Although beyond the scope of this article, such reforms in diocesan tax policies would also enable the bishops in the United States to speak more authentically on federal and state income tax issues, and especially to oppose the periodically recurring efforts to move to a flat federal income tax.²⁵⁴

"time and talent" to the diocese in some way. For example, those parishes might sponsor ceremonies to pray for diocesan and universal Church goals; allow the diocese to use their facilities on a rent-free basis; help to plan, organize, or lead special liturgies for the diocese; designate representatives for diocesan committees and boards; or offer some other sign of sacrifice in support of diocesan activities. Similar to the now-repealed *cathe-draticum* in the 1917 code, such acts indicate subjection to the bishop's authority and also convey communion with the diocese as part of the universal Church. See *supra*, notes 78–80 and accompanying text.

²⁵³ The nation's largest archdioceses almost certainly enjoy the resources and expertise necessary to develop and implement diocesan taxes that use progressive tax rates. Given their size, administrative complexity, and social and economic diversity, those dioceses also most closely resemble the nation states directly addressed in the Church's social teachings. See *supra*, note 246. Although more pressing priorities and enforcement concerns might alter the environment in important ways, the discussions of tax policy on the national level most closely translate to those archdioceses.

Smaller and less wealthy dioceses may lack either the resources or the expertise necessary to study this issue on their own. At the same time, solutions in the largest, urban archdioceses do not always work well in smaller or rural dioceses. In addition, needless costs arise when every diocese considers a common problem individually. As a result, the USCCB should consider undertaking a project that would draft one or more "model" systems of progressive diocesan tax systems for less wealthy dioceses. Keeping the "preferential option for the poor" in mind, any such project should initially consider both the needs and the environment in the poorest dioceses in this country. Similarly, that same teaching requires that any model give special consideration to the needs of the poorest parishes in the diocese.

²⁵⁴ Efforts to enact a "flat" federal income tax did not end with Steve Forbes's unsuccessful bid for the Republican presidential nomination in 1996. Legislation to amend the Internal Revenue Code of 1986, as amended, to impose flat taxes on individuals and businesses has again already been introduced in both the House of Representatives and the Senate during the 108th Congress, which began in January 2003. See, e.g., House, *Freedom Flat Tax Bill*, 108th Cong., 1st sess., 2003, H.R. 1783. Retired House Majority Leader Richard K. Armey, a leading advocate for a flat tax system, predicts that a "second term, popular President in the White House and a comfortable majority in Congress come 2004 – both of which are committed to tax reform [– could present] a once in a lifetime chance to make real change . . ." Dick Armey, "This Tax Day, Go Flat," *Tax Notes Today* (April 14, 2003) 72-27, ¶ 20; see also Patti Mohr, "Tax Reform Movement in the Works, Armey Says," *Tax Notes Today* (June 9, 2003) 111-4. More recently, House Majority Leader Tom DeLay predicted that a Republican victory in the 2004 elections would allow

Those dioceses that already use progressive tax rates for their diocesan taxes and assessments should eliminate any non-incremental tax brackets and bubbles.²⁵⁵ Any diocese already using or adopting progressive rates should remember that when very little spread exists between the lowest and highest tax rates, the system essentially becomes a “flat” tax.²⁵⁶

a complete tax overhaul, including the elimination of the IRS in favor of a national sales tax. Alternatively, he mentioned a flat income tax. Dustin Stamper & Heidi Glenn, “DeLay: GOP Election Victories Would Bring Major Tax Reform,” *Tax Notes Today* (March 24, 2004) 78-5. Although other Republican lawmakers have expressed skepticism about either prospect, *ibid.*, the House Republican Policy Committee has announced plans for a long-term agenda on fundamental tax reform. Dustin Stamper, “House GOP Policy Committee Embraces DeLay’s Call for Major Tax Reform,” *Tax Notes Today* (March 25, 2004) 59-3. National Taxpayer Advocate Nina Olson recently predicted that the widening reach of the alternative minimum tax will lead to major tax reform within the next decade and further speculated that either a flat tax or a consumption tax could replace the current income tax. Allen Kenney, “AMT to Bring Big Changes, Olson Tells Low-Income Advocates,” *Tax Notes Today* (June 23, 2004) 122-2. Although quite distant from the federal income tax, L. Paul Bremer III, then the U.S. administrator of the Coalition Provisional Authority in Iraq, recently signed an order establishing a flat fifteen percent tax on Iraqi individual and corporate income, effective January 1, 2004. See Jonathan Rickman, “Iraq to Establish 15 Percent Flat Tax in 2004,” *Tax Notes Today* (November 4, 2003) 215-9.

Although the federal income tax on individuals remains the largest and most progressive tax in the United States, the past twenty-five years have witnessed a sharp decline in the highest rate from seventy percent as recently as 1981 to the current thirty-five percent. For a short article arguing that the current trend in federal tax policy towards eliminating progressiveness conflicts with Catholic social thought, see Christopher R. Coccoza, “Paying the Piper,” *America* (March 29, 2004) 7-9.

In addition, the bishops may want to address the trend that has increasingly favored investment income over wage income as witnessed most recently by the 2003 reduction in the maximum statutory tax rate on qualified dividends and net capital gains to fifteen percent, a rate which falls well below the statutory maximum thirty-five percent on wages and other earned income. Furthering this discrimination, Social Security and Medicare taxes do not apply to investment income. See Institute on Taxation & Economic Policy, “Federal Taxation of Earnings versus Investment Income in 2004,” *Tax Notes Today* (May 8, 2004) 91-26.

On the state level, both the Iowa Catholic Conference and the Oregon Catholic Conference have recently issued statements regarding taxation policies in their states. Iowa Catholic Bishops, “Taxation Issues in Catholic Social Thought,” 441, 443.

²⁵⁵ See *supra*, note 141 and accompanying text.

²⁵⁶ Cf. Hamill, “Argument for Tax Reform,” 16, n. 35, discussing Alabama’s income tax structure. For example, assume a diocesan tax system that uses the following progressive, and incremental, rates:

<u>Assessable Income</u>	<u>Applicable Rate</u>
Between Zero and \$10,000	4% of the amount
Between \$10,000 and \$20,000	\$400, plus 8% of the amount over \$10,000
Over \$20,000	\$1,200, plus 10% of the amount over \$20,000

For any diocesan bishop who feels compelled to use flat rates, simple alternative reforms, such as creating or increasing a standard deduction or exemption, could remove poorer parishes from the diocesan tax rolls and improve the diocesan tax's progressivity by reducing effective tax rates on low- and moderate-income parishes.²⁵⁷ The use of a standard deduction or exemption essentially creates an extra tax bracket at the bottom of the income scale with a zero tax rate.²⁵⁸ In addition, allowing a parish to subtract a deduction or exemption amount²⁵⁹ for each registered parishioner or family would address concerns that a progressive tax would more heavily tax larger parishes.²⁶⁰

If they have not already done so recently, the diocesan bishops in the United States should reexamine their diocesan tax and assessment practices in light of the 1983 code and change any nonconforming practices where necessary or appropriate. Some dioceses may not have undertaken such a reexamination since Pope John Paul II promulgated the new code in 1983. Even though it repealed the *cathedraticum*,²⁶¹ at least twenty percent of the eighty-five dioceses in the NDLS survey refer to diocesan taxes or assessments under the 1983 code as a "cathedraticum."²⁶² While simply adopting the old term to refer to the current

Although such a structure appears progressive, if all the parishes in the diocese report assessable income over \$20,000, the rate structure would essentially operate as a flat tax in the sense that the diocese would impose a ten percent tax on every additional dollar of assessable income in the diocese.

²⁵⁷ See *supra*, note 88, discussing degressive taxes; see also Hall & Rabushka, *The Flat Tax*, 31, observing that a progressive tax system does not require different marginal rates; cf. Hamill, "Argument for Tax Reform," 12, n. 20, discussing benefits of larger exemptions to low-income taxpayers.

²⁵⁸ Cf. Hamill, "Argument for Tax Reform," 12, n. 19, noting that the federal personal exemption removes low-income individuals from the income tax rolls.

²⁵⁹ Under canon law, a bishop can authorize such a deduction or exemption from otherwise reportable income in the calculation of assessable income. See *supra*, notes 73–77 and accompanying text.

²⁶⁰ To illustrate this potential criticism, imagine two parishes, the first containing twice as many parishioners as the second. Suppose everyone in both parishes has indistinguishable characteristics, such as the same income and financial resources and an identical propensity to contribute to their parish. If the diocese imposes a progressive tax on these parishes, the larger parish will pay more than twice the tax that the smaller one pays, just because the first parish contains more parishioners. If we make the larger parish slightly poorer on the average than the smaller one, the situation becomes even worse: the system taxes poorer people more heavily than richer ones. Although the larger parish may enjoy some economies of scale, a deduction or exemption that in some way increases with the size of the parish would address such concerns.

²⁶¹ See *supra*, note 20.

²⁶² See *supra*, note 147 and accompanying text.

taxes and assessments does not come close to presenting the biggest problem in the modern Church, the nationwide use of another term would minimize potential confusion.

With regard to other substantive issues, recall that canon 1263 requires diocesan taxes and assessments to qualify as “proportionate to income.” As a result, canon 1263 does not authorize per capita taxes, or assessments that levy a fixed amount on each person or taxpayer subject to the exaction. That language similarly disqualifies any system that determines the diocesan tax or assessment, whether in whole or in part, on the number of parishioners, families, envelope holders, contributing parishioners or families, or students in the diocesan schools.²⁶³

Because canon 1263 does not specify how the diocesan bishop must determine “incomes,” the dioceses enjoy considerable discretion in that regard. All bishops and their advisors, however, should keep in mind that taxation systems often shape behavior. As a result, the definition and determination of assessable income can encourage the parishes in a diocese to engage in desired activities or to fund certain programs. Any exclusions or deductions from income should accurately measure a parish’s ability to pay. Wealth and accumulated assets affect ability to pay, so bishops and their advisors should consider provisions requiring parishes to add certain deposits or investments to otherwise reportable income in computing the amount of assessable income.²⁶⁴ At the same time, dioceses should arguably avoid credits, caps, and tax rates that vary depending upon factors other than income, because such provisions arguably violate the directive in canon law that the bishop must determine the tax based on “income.”

Although a well-known dictum from a landmark decision of the Supreme Court of the United States says that “the power to tax involves the power to destroy,”²⁶⁵ diocesan taxes and assessments allow a parish to help the diocese and the universal Church to build the kingdom of God here on earth. The closing sentence of the bishops’ letter reads: “Love implies concern for all—especially the poor—and a continued search for those social and economic structures that permit everyone to share in a community that is part of a redeemed creation.”²⁶⁶ Using progressive rates to impose diocesan taxes would better enable the U.S. bishops to practice what the gospel, the universal Church, and they themselves

²⁶³ See *supra*, note 81 and accompanying text.

²⁶⁴ See *supra*, note 77 and accompanying text.

²⁶⁵ *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819).

²⁶⁶ NCCB, “Economic Justice for All” ¶ 365, 448.

teach and potentially further the Church's efforts to build God's earthly kingdom throughout the world.

APPENDIX

NDLS Survey Methodology and Observations

To gather information about current diocesan taxing practices in the United States for this project, Research Librarian Patti J. Ogden used diocesan web sites, short e-mail requests for information, and several telephone conversations in an effort to collect data from 176 of the 195 dioceses then in the United States.¹ At least eleven dioceses post information about their diocesan taxes and assessments on their web sites.² Using links from a page on the USCCB's web site, Ogden sent e-mail messages containing a short survey³ to specific addressees at 144 of the

¹ When the survey began, the USCCB listed 195 dioceses on its web site at <<http://www.usccb.org/dioceses.htm>>, visited April 9, 2003. Subsequently, the Eparchy of St. Peter the Apostle of San Diego for Chaldeans was added to the list. United States Conference of Catholic Bishops, U.S. Catholic Dioceses by State, at <http://www.usccb.org/dioceses.htm>, visited July 28, 2004. The NDLS survey made no attempt to gather information from that eparchy or the following nineteen dioceses that ministered to the spiritual needs of various ethnic groups, the military, or the faithful in the Virgin Islands: Apostolic Exarchate of Armenian Catholics, Byzantine Catholic Eparchy of Passaic of the Ruthenians, Byzantine Eparchy of Parma, Byzantine Eparchy of Van Nuys for the Ruthenians, Eparchy of Our Lady of Lebanon of Los Angeles for Maronites, Eparchy of St. Thomas the Apostle, Eparchy of St. Thomas of Chicago of the Syro-Malabar, Lithuanian Catholics outside Lithuania, Military Services, Newton (Greek-Melkite), Our Lady of Deliverance of Newark of the Syrians, Philadelphia for Ukrainians, Pittsburgh (Byzantine Rite), Romanian Eparchy of St. George in Canton, St. Maron of Brooklyn for the Maronites, St. Nicholas in Chicago for Ukrainians, St. Thomas VI, Ukrainian Catholic Diocese of St. Josaphat in Parma, and Ukrainian Catholic Diocese of Stamford.

² The web sites of the following dioceses, arranged in alphabetical order according to their listing on the USCCB web site, discussed their assessments: Austin, Evansville, Gallup, Joliet, Orange, Peoria, Tucson, Venice, Wheeling-Charleston, Worcester, and Youngstown. Those dioceses are to be commended for making information about their diocesan assessments readily accessible.

³ A representative e-mail request for information read as follows:

I am research librarian working for a tax professor here at Notre Dame Law School. Prof. Barrett is writing an article about the canon law aspects of diocesan taxation, and as part of his research he is seeking information about how diocesan taxation is implemented in the various dioceses of the United States. Assuming most dioceses use a flat tax (all parishes subject to the same percentage), what is the range of assessment rates? For those that do utilize a progressive tax, what kind of tier structure is used?

I realize that some dioceses do not consider this information to be public, while others actually make it readily available. Not knowing the practice of your

remaining 165 dioceses.⁴ She received responses from seventy-seven dioceses, or almost 53.5 percent of the dioceses contacted.⁵ Five dioceses responded to inquiries, but chose not to provide information about their diocesan taxes.⁶ As a result, the efforts to collect information gathered data about the actual practices in eighty-five dioceses in the United States.

Although twelve dioceses or their representatives explicitly stated that their bishops do not impose a diocesan tax,⁷ the information obtained from at least two dioceses indicates that an annual appeal in the diocese set a mandatory goal or target for each parish in the diocese.⁸ Two other responses mention assessments for either a priests' retirement program, schools in the diocese, or the diocesan newspaper.⁹ One other diocese anticipates a diocesan tax in an upcoming fiscal year.¹⁰ Accepting the responses from those twelve dioceses as nevertheless accurate leaves a sample of seventy-three dioceses that view themselves as imposing diocesan taxes or assessments.

diocese, I can only beg your indulgence at our impertinence in even posing the question. If you can provide us with the data on your diocese, we would be grateful. If you cannot, we understand and appreciate your time in considering this message.

In Christ's peace,
Patti Ogden
Research Librarian
Notre Dame Law School

The actual requests varied slightly from diocese to diocese depending on whether we already knew something about their policy or rate from the web or could tell the addressee how many dioceses had already responded to our requests for information.

⁴ I made telephone calls to the Archdioceses of Chicago and New York. For various reasons, including the lack of a web link, a web site under construction, or the inability to direct an electronic request to a specific person, the survey did not request information from the following nineteen dioceses: Amarillo, Arlington, Atlanta, Boston, Duluth, El Paso, Honolulu, Jackson, Knoxville, Lincoln, Little Rock, Manchester, Nashville, Norwich, Oklahoma City, Santa Rosa, Tulsa, Wichita, and Yakima.

⁵ In addition, three other dioceses that provide information about their diocesan assessments on the web sites responded to requests for clarification or additional information. NDLS Survey Response Nos. 12, 54, and 76.

⁶ NDLS Survey Response Nos. 79, 87–90.

⁷ NDLS Survey Response Nos. 1, 3, 4, 11, 22, 28, 34, 37, 54, 62, 65, and 86.

⁸ NDLS Survey Response Nos. 22 and 37.

⁹ NDLS Survey Response Nos. 1 and 86.

¹⁰ NDLS Survey Response No. 3.